

United States
Circuit Court of Appeals

For the Ninth Circuit.

C. F. LYTLE CO., an Iowa corporation, GREEN CONSTRUCTION CO., an Iowa corporation, UNITED STATES FIDELITY AND GUARANTY COMPANY, a Maryland corporation, and AMERICAN SURETY COMPANY OF NEW YORK, a New York corporation,

Appellants,

vs.

C. M. WHIPPLE, Deputy United States Compensation Commissioner for the Fourteenth Compensation District, and CLARK NUTT, Guardian of Phyllis Elaine Nutt, Kenneth James Nutt and Raymond Albert Nutt, children of William Earnest Nutt, deceased,

Appellees.

Apostles on Appeal

Upon Appeal from the District Court of the United States
for the Western District of Washington
Northern Division

FILED
FEB 20 1946

PAUL P. O'BRIEN,
CLERK

No. 11217

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF PROCTORS

Proctors for Appellants:

MESSRS. MATTHEW STAFFORD and

G. H. BUCEY of Merritt, Summers, Bucey
& Stafford,

840 Central Building,
Seattle 4, Washington.

Proctor for Appellee C. M. Whipple:

MR. J. CHARLES DENNIS, United States
Attorney,

1017 U. S. Court House,
Seattle 4, Washington.

Proctor for Appellee Clark Nutt:

MR. L. M. KOENIGSBERG,

508 Central Building,
Seattle 4, Washington.

In the District Court of the United States for the
Western District of Washington, Northern
Division.

In Admiralty—No. 14797

C. F. LYTLE CO., an Iowa corporation, GREEN
CONSTRUCTION CO., an Iowa corporation,
and UNITED STATES FIDELITY & GUAR-
ANTY COMPANY, a Maryland corporation,
Libelants,

vs.

C. M. WHIPPLE,

Respondent.

LIBEL

The libel of C. F. Lytle Co., an Iowa corporation, Green Construction Co., an Iowa corporation, and United States Fidelity & Guaranty Company, a Maryland corporation, against C. M. Whipple in a cause civil and maritime for review of an order of the United States Compensation Commission under Public Law 208 of the 77th U. S. Congress, Act of August 16, 1941, as amended, alleges:

I.

That C. F. Lytle Co. is a corporation organized under the laws of the State of Iowa and having its principal place of business in the State of Iowa; that Green Construction Co. is a corporation organized under the laws of the State of Iowa and having its principal place of business in the State of Iowa; that United States Fidelity & Guaranty

Company is a corporation organized under the laws of the State of Maryland and having its principal place of business in the State of Maryland, but qualified to do and doing business in the State of Washington. That during the year 1942 libelants C. F. Lytle Co. and Green Construction Co. were engaged together in a joint venture in the prosecution of a contract with the United States of America; that the work under such contract was subject to the provisions of Public Law 208 of the 77th U. S. Congress, Act of August 16, 1941, as amended; that the underwriter of the obligations under that law of said joint venture was United States Fidelity & Guaranty Company, hereinabove described.

II.

That C. M. Whipple is and was on July 3, 1945, the duly appointed, qualified and acting Deputy Commissioner for the Fourteenth Compensation District of the United States Employees' Compensation Commission with his office located in Seattle, King County, Washington, and in the judicial district of the United States of America in which this suit is brought; that the said Fourteenth Compensation District includes the Territory of Alaska, U.S.A.

III.

That on June 26, 1942, William Earnest Nutt met his death at or near Big Delta, Territory of Alaska, U.S.A.; that for some time prior to June 26, 1942, William Earnest Nutt had been employed

by the joint venture hereinabove described in the prosecution of the contract hereinabove described; that said William Earnest Nutt left surviving him no widow but did leave surviving him three minor children; that on June 14, 1943, a claim for compensation under Public Law 208 of the 77th U.S. Congress, Act of August 16, 1941, as amended, was filed in the office of respondent Deputy Commissioner by Clark Nutt, guardian of said three minor children of William Earnest Nutt, namely, Phyllis Elaine Nutt, Kenneth James Nutt, and Raymond Albert Nutt.

IV.

That after the claim described in the last preceding paragraph had been filed in the office of respondent Deputy Commissioner the claimant and libelants herein through their respective counsel had stipulated in writing that respondent Deputy Commissioner could and should consider as the record in this case (a) a transcript of the testimony taken at a coroner's inquest held at Fairbanks, Alaska, on June 29, 1942, before the Honorable William N. Growden, United States Commissioner and Ex-Officio Coroner in and for Fairbanks Precinct of the Fourth Judicial Division of the Territory of Alaska, United States of America; and (b) the depositions consisting of transcripts of written interrogatories and answers thereto of Messrs. A. A. Lyon, William H. Green, Ralph Green, and Robert Nine, all of which transcripts

were filed in the office of said Deputy Commissioner C. M. Whipple.

V.

That after said stipulation was made and after said transcripts had been filed in the office of said respondent Deputy Commissioner, on July 3, 1945, said respondent Deputy Commissioner filed in his office the compensation order and award of compensation of which a copy is hereto attached and by this reference made a part hereof as fully as though set out herein verbatim; that the C. F. Lytle Co., Green Construction Co., and United States Fidelity Guaranty Company named in said compensation order and award of compensation are identical with the libelants in this suit.

VI.

That the record hereinabove described remains in the possession of respondent Deputy Commissioner as his record in this case and will be filed in this court and in this proceeding by said respondent Deputy Commissioner. That by this reference to said record libelants incorporate said record in this libel as fully as though set out herein verbatim.

VII.

That the compensation order and award of compensation of July 3, 1945, hereinabove described, a copy of which is hereto attached, is not in accordance with law because the record upon which this compensation order and award of compensation is based contains no substantial evidence that

the death of William Earnest Nutt arose out of and in the course of his employment and because the same record establishes affirmatively that the death of William Earnest Nutt was occasioned solely by the intoxication of said William Earnest Nutt.

VIII.

All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore, the libelants pray that a citation according to the practice of this court may be issued against the said C. M. Whipple citing him to appear and answer on oath the matters aforesaid; and that this honorable court may be pleased to decree the suspension and setting aside in its entirety, by injunction or otherwise, of the compensation order and award of compensation made and filed by respondent herein on July 3, 1945; and that libelants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

HAYDEN, MERRITT, SUMMERS &
STAFFORD, MATHEW STAFFORD
and A. W. MURRAY.

MATTHEW STAFFORD,
A. W. MURRAY,

Proctors for Libelants.

United States of America,
State of Washington,
County of King—ss.

A. W. Murray, being first duly sworn on oath deposes and says: That he is Attorney and Supt. of Claim Dept. of the United States Fidelity and Guaranty Company, a Maryland corporation, and that he makes this verification for and on behalf of said libelant; that this deponent has had personal direction of the investigation and litigation of the claim of William Earnest Nutt described in the foregoing libel and that the allegations contained in said libel are true to the best of his knowledge, information and belief; that this deponent verifies this libel for the reason that no officer of the United States Fidelity & Guaranty Company is within this district.

A. W. MURRAY.

Subscribed and sworn to before me this 19th day of July, 1945.

[Seal] MATTHEW STAFFORD,
Notary Public in and for the State of Washington, residing at Seattle.

[Endorsed]: Filed Jul. 19, 1945.

[Title of District Court and Cause.]

LIBELANT'S STIPULATION FOR COSTS

Whereas, a libel and complaint was filed in this court on the 19th day of July, 1945, by C. F. Lytle Company and Green Construction Company and

United States Fidelity and Guaranty Company against C. M. Whipple, Deputy United States Compensation Commissioner for the reasons and causes in said libel mentioned, and the said C. F. Lytle Company and Green Construction Company and United States Fidelity and Guaranty Company, Libelants, and the American Surety Company of New York, as Surety, parties hereto, hereby consent and agree that in case of default or contumacy on the part of the Libelant or their surety, execution may issue against their goods, chattels and lands for the sum of Two Hundred Fifty Dollars (\$250.00).

Dated this 19th day of July, 1945.

Now, Therefore, it is hereby stipulated and agreed, for the benefit of Whom It May Concern:

That the stipulators undersigned shall be and are bound in the sum of Two Hundred Fifty Dollars (\$250.00) conditioned that C. F. Lytle Company and Green Construction Company and United States Fidelity and Guaranty Company, Libelants, above named shall pay all costs as shall be awarded against them by this Court, or in case of appeal, by the Appellant Court.

[Seal] AMERICAN SURETY COM-
PANY OF NEW YORK.

By J. A. HODSON,
Resident Vice-President.

Attest:

K. F. WARRACK,
Resident Asst. Secretary.

[Endorsed]: Filed July 19, 1945.

[Title of District Court and Cause.]

APPLICATION FOR INTERLOCUTORY IN-
JUNCTION STAYING PAYMENT OF AN
AWARD

Come now C. F. Lytle Co., an Iowa corporation, Green Construction Co., an Iowa corporation, and United States Fidelity & Guaranty Company, a Maryland corporation, libelants herein, and apply for an interlocutory injunction allowing the stay of all payments required to be made by the terms of that certain compensation order and award of compensation heretofore on July 3, 1945, made and filed by respondent C. M. Whipple, Deputy Commissioner for the Fourteenth Compensation District of the United States Employees' Compensation Commission in his case No. DB-14-655-11 under Public Law 208 of the 77th United States Congress, Act of August 16, 1941, as amended, and in support of this application show and offer to prove, on hearing, that an irreparable damages will otherwise ensue to libelants herein by reason of the following facts:

1. That said compensation order and award of compensation, a copy of which is attached to the libel in this suit, which libel by this reference is hereby made a part hereof as fully as though set out herein verbatim, requires the libelants herein forthwith to pay to Clark Nutt the sum of \$1767.82 and hereafter to continue payments to said guardian at the rate of \$11.26 a per week; that said compensation order and award of compensation

further requires libelants herein forthwith to pay to Clark Nutt as an individual the sum of \$200.00.

2. That said libelants and petitioners herein are informed and believe that if said payments are made and that if thereafter said compensation order and award of compensation is suspended and set aside by this court, the amount so paid cannot be recovered from the payee.

Wherefore, these libelants and petitioners pray that this court issue an interlocutory injunction herein allowing libelants to stay all payments under the compensation order and award of compensation herein described pending final decision of the suit in which this interlocutory injunction is sought.

HAYDEN, MERRITT, SUMMERS &
STAFFORD, MATTHEW STAFF-
FORD and A. W. MURRAY.

MATTHEW STAFFORD,
A. W. MURRAY,

Proctors for Libelants.

United States of America,
State of Washington,
County of King—ss.

A. W. Murray, being first duly sworn on oath deposes and says: That he is Attorney and Supt. of Claim Dept. of the United States Fidelity & Guaranty Company, a Maryland corporation, and that he makes this verification for and on behalf of said libelant; that this deponent has had personal

direction of the investigation and litigation of the claim of William Earnest Nutt described in the foregoing application for interlocutory injunction staying payment of an award and that the allegations contained in said application are true to the best of his knowledge, information and belief; that this deponent verifies this application for the reason that no officer of the United States Fidelity & Guaranty Company is within this district.

A. W. MURRAY.

Subscribed and sworn to before me this 19 day of July, 1945.

[Seal] MATTHEW STAFFORD,

Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed July 19, 1945.

[Title of District Court and Cause.]

NOTICE OF APPLICATION FOR INTER-
LOCUTORY INJUNCTION

To Clark Nutt, as the legally appointed guardian of Phyllis Elaine Nutt, Kenneth James Nutt, and Raymond Albert Nutt, minor children of William Earnest Nutt; and to J. O. Watson, Jr., their attorney; and to C. M. Whipple:

You Are Hereby Notified and please take notice that on July 30, 1945, at 10:00 A.M. or as soon thereafter as proctors can be heard, the undersigned proctors for libelants herein will bring on for hearing before the Honorable Judge John C. Bowen,

one of the judges of the above-entitled court, in his courtroom in the United States Court House, Seattle, King County, Washington, application of libelants herein for an interlocutory injunction allowing the stay of all payments under that certain compensation order and award of compensation heretofore made and filed on July 3, 1945, by C. M. Whipple, Deputy Commissioner for the Fourteenth Compensation District of the United States Employees' Compensation Commission in his Case No. DB-14-655-11, a copy of said application for interlocutory injunction being attached hereto and herewith served upon you.

Dated at Seattle, Washington, July 19, 1945.

HAYDEN, MERRITT, SUMMERS &
STAFFORD, MATTHEW STAFF-
FORD and A. W. MURRAY.

MATTHEW STAFFORD,
A. W. MURRAY.

[Endorsed]: July 19, 1945.

In the District Court of the United States for the
Western District of Washington, Northern
Division.

Court Room No. 1, Monday, August 6, 1945.

Honorable John C. Bowen presiding.

[Title of Cause.]

Now on this 6th day of August, 1945, Matthew Stafford, of Hayden, Merritt, Summers & Stafford,

appearing on behalf of libelant, this cause comes on for hearing on the libelant's application for Interlocutory Injunction. The same is called and denied.

[Title of District Court and Cause.]

DEFENDANT WHIPPLE'S MOTION TO
DISMISS LIBEL

Now comes the defendant, C. M. Whipple, Deputy Commissioner, United States Employees' Compensation Commission, by J. Charles Dennis, United States Attorney, and moves this Honorable Court to dismiss the libel herein for the following reasons:

1. That the libel herein does not state a cause of action and does not entitle the plaintiffs to any relief, nor does said libel state a claim against the defendant upon which relief can be granted;

2. That it appears from the libel, including the transcript of testimony, taken at the inquest before Honorable William N. Growden and the several depositions, all of which are made part of the libel by reference, that the findings of fact of the deputy commissioner in the compensation order filed by him on July 3, 1945, are supported by evidence and under the law said findings of fact should be regarded as final and conclusive;

3. That it appears from the libel, including the transcript of testimony and depositions above

referred to, that the compensation order filed by the deputy commissioner on July 3, 1945, complained of in the libel, is in all respects in accordance with law;

4. For such other good and sufficient reasons as may be shown.

/s/ J. CHARLES DENNIS,

/s/ HERBERT O'HARE,

Assistant United States At-
torney, Attorneys for C. M.
Whipple.

[Endorsed]: Filed Oct. 3, 1945.

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated by the parties hereto by their undersigned attorneys as follows:

That the record heretofore certified to this court by Honorable C. M. Whipple, Deputy United States Compensation Commissioner for the Fourteenth Compensation District as the record before him in the matter of the claim for compensation for the death of William Earnest Nutt, dated at Seattle, Washington, October 31, 1945, and listing forty-five separate documents (a copy of the certification being hereto attached and by this reference made a part hereof), shall be and is hereby agreed upon as the entire record which was submitted to the

United States Employees' Compensation Commission and particularly to said Honorable C. M. Whipple, Deputy Commissioner, in passing upon this claim.

It Is Further Stipulated that the record as so certified may become a part of the records and files herein for all purposes of this proceeding.

Dated at Seattle, Washington, November 5, 1945.

C. M. WHIPPLE,

By J. CHARLES DENNIS,

United States District Attorney.

By HERBERT O'HARE,

Assistant United States District Attorney.

Attorneys and Proctors for Respondent.

C. F. LYTLE CO.,

GREEN CONSTRUCTION CO.,

UNITED STATES FIDELITY

& GUARANTY CO.

By MERRITT, SUMMERS, BUCEY
& STAFFORD.

By MATTHEW STAFFORD,

Attorneys and Proctors for Libelants.

L. M. KOENIGSBERG.

By H. S. SANFORD,

For Claimant-Intervenor.

[Endorsed]: Filed Nov. 5, 1945.

United States Employers' Compensation Commission Longshoremen's and Harbor Workers' Compensation Act, Fourteenth Compensation District District, 300 Colman Building, First Avenue and Marion Street, Seattle 4, Washington.

CERTIFICATION

I hereby certify that the record before me in the matter of the claim for compensation for the death of William Earnest Nutt, now on appeal in *C. F. Lytle Company, Green Construction Company, and United States Fidelity & Guaranty Company, libellants, v. C. M. Whipple*, respondent, Admiralty No. 14797, W. D. Wash. N. D., consists of the following described documents attached hereto on each of which I have affixed the number corresponding with that of its description set forth below:

1. A full, true and correct copy of Letters of Guardianship in the Guardianship of Phyllis Elaine Nutt, et al, Minors, No. 6237.

2. Form US-262, Claim for Compensation in Death Case, filed on June 14, 1943, by Clark Nutt, Guardian of Phyllis, Kenneth and Raymond Nutt, Minors.

3. Form US-262, Claim filed by Clark Nutt individually for money expended for funeral expenses.

4. Preliminary Statement filed by J. O. Watson, Jr., Attorney for Minor children of William Earnest Nutt, Deceased, and Attorney for Clark Nutt, claimant for burial expense.

5. Letter to Deputy Commissioner W. A. Marshall, dated August 27, 1943, from J. O. Watson, Jr., Attorney.

6. Copy of letter to A. W. Murray, U. S. Fidelity and Guaranty Company, dated August 27, 1943, from J. O. Watson, Jr., Attorney.

7. Letter to Deputy Commissioner W. A. Marshall dated September 1, 1943, from A. W. Murray, U. S. Fidelity & Guaranty Co.

8. Letter to Deputy Commissioner W. A. Marshall, dated September 20, 1943, from A. W. Murray, U. S. Fidelity & Guaranty Co.

9. Copy of letter to J. O. Watson, Jr., dated September 21, 1943, from Deputy Commissioner W. A. Marshall.

10. Letter to Deputy Commissioner W. A. Marshall, dated September 27, 1943, from J. O. Watson, Jr.

11. Copy of letter to A. W. Murray, U. S. Fidelity & Guaranty Co., dated September 27, 1943, from J. O. Watson, Jr.

12. Copy of letter to J. O. Watson, Jr., dated October 15, 1943, from Howard W. Hedgcock, U. S. Fidelity & Guaranty Company.

13. Letter to Deputy Commissioner W. A. Marshall, dated November 5, 1943, from J. O. Watson, Jr.

14. Copy of letter to Howard W. Hedgcock, U.

S. Fidelity & Guaranty Company, dated November 5, 1943, from J. O. Watson, Jr.

15. Letter to Deputy Commissioner W. A. Marshall, dated November 29, 1943, from J. O. Watson, Jr.

16. Copy of letter to Howard W. Hedgecock, U. S. Fidelity & Guaranty Company, dated November 29, 1943, from J. O. Watson, Jr.

17. Letter to Deputy Commissioner W. A. Marshall, dated December 20, 1943, from J. O. Watson, Jr.

18. Copy of letter to Howard W. Hedgecock, U. S. Fidelity & Guaranty Company, dated December 20, 1943, from J. O. Watson, Jr.

19. Letter to Deputy Commissioner W. A. Marshall, dated January 10, 1944, from J. O. Watson, Jr.

20. Copy of letter to Howard W. Hedgecock, U. S. Fidelity & Guaranty Company, dated January 10, 1944, from J. O. Watson, Jr.

21. Letter to Deputy Commissioner W. A. Marshall, dated January 19, 1944, from Howard W. Hedgecock, U. S. Fidelity & Guaranty Co.

22. Copy of letter to J. O. Watson, Jr., dated September 8, 1944, from Howard W. Hedgecock, U. S. Fidelity & Guaranty Company.

23. Letter to Deputy Commissioner W. A. Marshall, dated October 26, 1944, from J. O. Watson, Jr.

24. Copy of letter to J. O. Watson, Jr., dated November 1, 1944, from Howard W. Hedgcock, U. S. Fidelity & Guaranty Co.

25. Letter to Deputy Commissioner W. A. Marshall, dated November 30, 1944, from J. O. Watson, Jr.

26. Copy of letter to J. O. Watson, Jr., and U. S. Fidelity & Guaranty Company, dated December 4, 1944, from Deputy Commissioner W. A. Marshall.

27. Letter to Deputy Commissioner W. A. Marshall, dated December 5, 1944, from Howard W. Hedgcock, U. S. Fidelity & Guaranty Company.

28. Letter to U. S. Fidelity & Guaranty Co., dated December 6, 1944, from Deputy Commissioner W. A. Marshall.

29. Letter to U. S. Fidelity & Guaranty Co. and J. O. Watson, Jr., dated February 15, 1945, from Deputy Commissioner C. M. Whipple.

30. Letter to Deputy Commissioner C. M. Whipple, dated February 16, 1945, from Howard W. Hedgcock, U. S. Fidelity & Guaranty Co.

31. Letter to Deputy Commissioner C. M. Whipple, dated February 27, 1945, from J. O. Watson, Jr.

32. Letter to J. O. Watson, Jr., dated March 1, 1945, from Deputy Commissioner C. M. Whipple.

33. Letter to Deputy Commissioner C. M. Whip-

ple, dated April 6, 1945, together with application for Approval of Attorneys Fees and Brief and Argument.

34. Letter to U. S. Fidelity & Guaranty Co., dated April 10, 1945, from Deputy Commissioner C. M. Whipple.

35. Letter to Deputy Commissioner C. M. Whipple, dated April 12, 1945, from Howard W. Hedgecock, U. S. Fidelity & Guaranty Company.

36. Letter to Deputy Commissioner C. M. Whipple, dated April 14, 1945, from J. O. Watson, Jr.

37. Letter to Deputy Commissioner C. M. Whipple, dated June 11, 1945, with attached Reply Brief and Argument, from Howard W. Hedgecock, U. S. Fidelity & Guaranty Co.

38. Copy of letter to J. O. Watson, Jr., dated June 16, 1945, from Deputy Commissioner C. M. Whipple.

39. Letter to Deputy Commissioner C. M. Whipple, dated June 15, 1945, with enclosed Rebuttal Brief, from J. O. Watson, Jr.

40. Transcript of proceedings before William N. Growden, United States Commissioner and ex-officio Coroner, Fairbanks Precinct, Fourth Judicial Division, Alaska, in the Matter of the Inquest upon the Body of William Earnest Nutt, deceased, at Fairbanks, Territory of Alaska, on June 29, 1942.

41. Deposition on written Interrogatories of A. A. Lyon.

42. Deposition on written Interrogatories of W. H. Green.

43. Deposition of written Interrogatories of Ralph Green.

44. Deposition of written Interrogatories of Robert L. Nine.

45. Compensation Order, Award of Compensation, filed July 31, 1945.

Seattle, Washington, October 31, 1945.

/s/ C. M. WHIPPLE,
Deputy Commissioner.

In the Commissioner's Court, Fairbanks Precinct,
Fourth Division, Territory of Alaska

In the Matter of the Inquest upon the Body of
William Earnest Nutt, Deceased. No. 176.

PROCEEDINGS

1942

June 29. I, William N. Growden, United States Commissioner and ex-officio Coroner in and for Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, having been informed that William Earnest Nutt died under circumstances indicating suicide, thereupon issued an order for jury returnable at 2:00 o'clock P.M., June 29, 1942.

June 29. File & Enter Marshal's Return on Order for Jury, as follows:

United States of America,
Territory of Alaska—ss.

I Hereby Certify That I received the within Jury Order at Fairbanks, Alaska, on the 29th day of June, 1942, and that I served the same on the 29th day of June, 1942, at Fairbanks, Alaska, by summoning the following to act as Jurors in the above entitled case:

J. W. Siebenthaler, Fairbanks, Alaska;

James Mack, Fairbanks, Alaska;

Magnus Johnson, Fairbanks, Alaska;

O. P. Daun, Fairbanks, Alaska;

Franklin McGarvey, Fairbanks, Alaska;

George Bachner, Fairbanks, Alaska.

Dated at Fairbanks, Alaska, June 29, 1942.

J. A. McDONALD

U. S. Marshal

By PAT O'CONNOR,
Deputy

June 29. Issue Subpoena.

June 29. The above named jurors appeared in the Commissioner's Court Room at Fairbank's, Alaska, at the hour of 2:00 o'clock P.M. The jury were duly qualified and sworn, after which they

heard the sworn testimony of the following witnesses: James F. Browne, Otto Berg, Ray E. Johnston, Harold W. Johnston, Walter L. Wheelchel, Arthur J. Schaible, M. D., and John J. Buckley.

The jury then proceeded to the Tye Funeral Home where they examined the body, after which they returned to the U. S. Commissioner's Court Room, and, after due deliberation, returned the following verdict: (Name of Court and Title of Cause) Verdict.

We, the members of the duly empanelled Coroner's Jury in the aforesaid inquest, after having heard the sworn testimony of the various witnesses; having diligently inquired into the circumstances surrounding the death, and having personally inspected the body of William Earnest Nutt, and being fully advised in the premises, respectfully submit our findings and verdict, as follows:

The name of the deceased is William Earnest Nutt whose residence is Big Delta, Alaska.

The time of his death was approximately 11 P.M., June 26th, 1942.

The place of his death was 4 miles south of Big Delta on Richardson Highway.

The deceased came to his death by means of head and neck injuries sustained by falling from truck.

We find no one responsible for his death.

In Witness Whereof, we have set our hands this
29th day of June, 1942, at Fairbanks, Alaska.

FRANKLIN McGARVEY
GEORGE BACHNER
JAMES P. MACK
J. M. SIEBENTHALER
O. P. DAUN
MAGNUS JOHNSON

I approve the above rendered verdict.

[Seal] WILLIAM N. GROWDEN
U. S. Commissioner and
Ex-Officio Coroner.

June 29. Enter return on subpoena, as follows:
United States of America,
Territory of Alaska—ss.

I Hereby Certify That I received the foregoing
subpoena on the 29th day of June, 1942, at Fair-
banks, Alaska, and served the same by reading and
showing the original and delivering a ticket contain-
ing the substance thereof to each of the within
named witness James F. Browne, Otto Berg, Ray
E. Johnston, Harold W. Johnston, Walter L. Whel-
chel, Arthur J. Schaible, M. D., Personally.

J. A. McDONALD,
U. S. Marshal

By JOHN J. BUCKLEY,
Deputy

United States of America,
Territory of Alaska,
Fairbanks Precinct—ss.

I, William N. Growden, United States Commissioner, do hereby certify that the above and foregoing is a full, true and correct transcript of the proceedings In the Matter of the Inquest upon the Body of William Earnest Nutt, Deceased, as set forth in the Inquest Docket as Cause No. 176 on page 153 thereof.

[Seal]

WILLIAM N. GROWDEN

United States Commissioner

In the Commissioner's Court for Fairbanks
Precinct, Fourth Division, Alaska
No. 176

In the Matter of the Inquest Upon the Body of
William Ernest Nutt, Deceased.

TRANSCRIPT OF TESTIMONY

The above inquest was held at 2:00 o'clock P.M. on June 29th, 1942, before the Honorable William N. Growden, United States Commissioner and Ex-Officio Coroner, in the above entitled Court at Fairbanks, Alaska, and the following is the transcript of the testimony in full.

WALTER WELCHELL,

being first duly sworn, testified as follows:

Examination by Harry O. Arend, Assistant U. S. Attorney:

Q. Your name is Walter Welchell, is it?

A. Yes.

Q. Where do you live?

A. Do you mean my former address.

Q. Now. Where you are now?

A. Big Delta.

Q. Were you acquainted with William Ernest Nutt?

A. Not before I came up here.

Q. How long had you known him up here?

A. About 3 or 4 weeks.

Q. Was he working with you?

A. Yes. I am greasing machinery there.

Q. When did you last see him alive?

A. The day he was killed.

Q. What day was that?

A. Friday, the 26th.

Q. The 26th is Saturday. No Friday. Where did you see him?

A. Down at Rika's Roadhouse.

Q. What was he doing there?

A. There were a bunch of fellows down there. He went down in a truck to load up a boat. Otto Berg and I came down. We were going to see two Indians to buy a bear hide. We knew the fellows that were there because they all work there. We had a bottle of beer with them—two or three bottles of beer, I think. When the other truck got ready to go home that the gang went down with, they didn't

(Testimony of Walter Welchell.)

want to go home. There was Ernest Nutt and Jack and Ray, brothers, that wasn't quite ready to go home so they went with us. We left there and went up to Jimmy Brown's cabin. We had two checks for him that the bookkeeper gave to us to take down to him. We all went up there. When we started home there was Otto Berg—he was driving, mechanic up there and myself, and Jimmy Brown—we were in the front seat and Ray Johnston and Jack Johnston and Ernest Nutt were in the back of the truck. Ray was sitting right on the box. Jack was sitting with his back up next to the cab sitting on the edge of the box, and Ernest was sitting flat on the bottom too. Just about two minutes before it happened I glanced back through the glass and they were all laughing and talking and that is the last time I saw him alive.

Q. Then after that what happened?

A. The road was smooth in that spot. We felt a jar in the truck but otherwise we would never have known to stop. We thought we must have hit something or bumped under the hind wheel.

Q. Who was driving? A. Otto Berg.

Q. What kind of vehicle?

A. '37 or '38 truck. Dump truck.

Q. There were three in the back and three in the front? A. Yes.

Q. Did you hear any shouts just before you felt this? A. No.

Q. You didn't? A. No.

Q. Did you see the body afterwards?

(Testimony of Walter Welchell.)

A. I didn't go back to look. I was about ten feet from it.

Q. What did all of you do that were left in the car?

A. Well, Jimmy and Ray stayed there with the body and Otto, Jack and myself went in to camp to notify Mr. Cole, the bookkeeper.

Q. Did all the others go back to examine the body after the accident?

A. No. Otto and Ray and Jimmy went back.

Q. You did not?

A. No. I didn't go. I was feeling kind of bad. I was afraid to look at him.

Q. How old a man was he, to your estimation?

A. Looked like he would be around 45—a tall fellow.

Q. Had he been quarreling with any of the men?

A. No, he was a quiet fellow—very easy to get along with.

Q. Did he have any worries? Did he ever express any? A. Not to me, no.

Q. Was he very drunk.

A. No. He was feeling good, but not drunk so he didn't know what he was doing. He crawled in the truck by himself.

Q. Can you attribute any cause to the accident, as to why he might—

A. No. I couldn't figure out how it could happen.

Q. You didn't see him leave the truck?

A. No.

(Testimony of Walter Welchell.)

Q. Will you give me the names of the two who were in back with him?

A. Ray and Jack Johnston. Jack was sitting right on the edge of the box—no, on the edge of the box with his back against the cab.

Q. Has the company any restrictions against carrying men in dump trucks? A. No.

Question by Coroner: The men in the back were sitting with their backs to the cab?

A. Just one. Ernest and Ray Johnston were sitting flat on the bottom of the box.

Mr. Arend: Where did this happen? You can place it on the highway?

A. I judge it to be—estimate it three or four miles on the other side of Big Delta—well, the Tanana River.

Q. At the Tanana River?

A. On the other side. They call it Big Delta there.

Q. Did any other cars pass you while you were at that point? A. No.

Q. No other cars. Are there any other questions? Was this on a straight of way of the road, or on a curve? A. I believe it was straight.

Q. Did you take any special notice of the spot where you were?

A. No. I was pretty well riled up.

Q. You are not sure it was a straight of way?

A. There was no curves there, I am pretty sure. Not right there.

(Testimony of Walter Welchell.)

Q. Did you return at a later time to the scene of the accident? A. No.

(Witness excused.)

DR. A. J. SCHAIBLE,

being first duly sworn, testified as follows:

Q. What is your full name?

A. A. J. Schaible.

Q. You are a registered physician and surgeon?

A. Yes.

Q. How long have you engaged in practice?

A. Since November of last year here in Fairbanks.

Q. Before that? A. Since 1935.

Q. Were you acquainted with William Ernest Nutt? A. Not before his death.

Q. You did not know him. Did you have occasion to view his body last weekend? A. Yes.

Q. What day?

A. Saturday afternoon, about 4, I believe.

Q. Where did you see the body?

A. At the Tye Funeral Home.

Q. Did you make a close examination?

A. Yes. I didn't do a regular autopsy or post mortem. I didn't cut into the body at all. But I felt around it. The man—there was evidence that he had died from some injury. The left side of his face was black and scarred and also the left side of his chest and marks on his left arm. I signed the

(Testimony of Dr. A. J. Schaible.)

death certificate as cerebral concussion from the skull fracture. I learned subsequently that right after he was found his neck was turned completely around but when I saw him rigor mortis had set in and when I tried to move his neck it wouldn't move. He had a swelling on the side of his neck. I am satisfied that a severe injury caused his death—the cutting off of the spinal cord or a skull fracture. If the jury wants a definite diagnosis I would suggest ex-raying the man and we can see then whether his neck was broken.

Q. It would reveal it?

A. It would reveal that the bones were broken. What killed the man is the cutting of the spinal cord. It is possible for even a dislocation to cut that cord and kill a man instantly.

Q. How old was he? A. About 40 or 45.

Q. How tall?

A. Quite tall. I would judge in the neighborhood of 6 feet. I didn't measure him. He was quite muscular.

Q. Have you any—can you give any opinion as to what would have caused the bruises?

A. A fall from a truck—a fall from the truck with the truck running over him or striking him could have.

Q. The injury couldn't happen in the truck?

A. No. I doubt it. He gave the impression as if he had been dragged. He had a bunch of marks on the chest. Abrasions were on him—a single blow over the head—I don't think so.

(Testimony of Dr. A. J. Schaible.)

Q. The bruises were all on the face?

A. On the left side and on the chest and on the arm, as I recall it.

Q. Any open wounds?

A. There were abrasions. Skin rubbed off.

Q. No such thing as a bullet wound or knife wound?

A. No. Nothing like that.

Q. Were his eyes blacked at all. Was there swelling?

A. Yes, there was swelling over the left eye.

Q. It extended to the left eye, did it?

A. The left eye.

Q. You think that could have been made by the blow of a fist?

A. As I recall it, it had scratch marks as if he had hit something. A fist, you would expect to tear or you wouldn't expect the marks as you would get dragging a body over gravel. It didn't look like one single blow. It was something that jerked it.

(Witness excused.)

JOHN J. BUCKLEY,

being first duly sworn, testified as follows:

Q. Your name is John J. Buckley?

A. Yes, sir.

Q. You are the Chief Deputy Marshal for this Division?

A. Yes, sir.

Q. Were you acquainted with William Ernest Nutt?

(Testimony of John J. Buckley.)

A. No, I wasn't. Not until after his death.

Q. Did you see his body after his death?

A. Yes, sir.

Q. On what day?

A. On Saturday. Last Saturday, June 27th.

Q. At what time? A. About 3 o'clock A.M.

Q. Where?

A. About 3 miles south of Big Delta on the Richardson Highway.

Q. In what kind of surroundings?

A. He was laying in the road with his feet toward the bank of the road, lying on the shoulder of the road with his head quite close to the travel marks on the road. As a matter of fact, it was right on the edge of the travel wear of the road. Lying with his face looking towards the woods on the right hand side of the road going out.

Q. Were his feet pointing to Fairbanks or towards Valdez?

A. Right at that spot I don't know the directions but he was on the right hand side of the road with his feet pointing toward the ditch.

Q. Right hand?

A. He was lying this way (motioning) with his feet toward the ditch. Right on the shoulder.

Q. More cross ways of the road?

A. He was directly across the road.

Q. Any part of his body in the road bed?

A. His head was on the outside of the regular travel of the road.

Q. Just outside?

(Testimony of John J. Buckley.)

A. You would have to turn out around him to get around. There were marks there where cars had travelled.

Q. Was anyone else there?

A. Jim Brown and Ray Johnston and the book-keeper for Lytle and Green. I don't recall his name.

Q. Did anyone else go out with you?

A. Mr. Growden, U. S. Commissioner and I and Patrolman Buster Anderson.

Q. Did you make an inquiry there as to the cause of this man's death? A. Yes.

Q. What did you find?

A. I found out from Ray Johnston who was watching the body that they had been down to Big Delta and I found out later that they had been sent to Big Delta by the foreman to make some repairs on the boat which they had done and had been scheduled to go home about 8 or 8:30 in the evening. A man by the name of Otto Berg wasn't going back until later and these men, Nutt and the two Johnston brothers and one other decided to stay there and wait for Otto Berg. They had been drinking considerable and my information was that Nutt had drunk very heavily and had passed out. They put him in bed and he got up and seemed to be all right—got into the truck by himself and the three of them sat in the truck with their backs toward the cab. They travelled about three miles to where the body was when Ray Johnston said that Ernest Nutt made the remarks "There's a moose out there. Here's where I get off." The next thing they knew

(Testimony of John J. Buckley.)

he was gone, whether he fell out or jumped out. Johnston wasn't altogether sober. It appears that the ground at the point where he hit the ground was on a straight of way after they had gone around a small curve and had got out into the straight of way on the road and travelled 200 feet from the curve, and showed marks where he hit the ground apparently with his feet spread out. You could see where the ground was broke, and then evidently he went over on his head and face and slid on the ground. His right shoulder had a little bruise. His left side was all bruised and scratched and along his face where the flesh had hit, the gravel was ground into the side of his face. The body was warm when we got there. Both the Commissioner and myself looked for wounds on the body—picked up his head and I believe—we were certain his neck was broken because the neck was twisted around as though there was nothing there to hold it and we could feel what we thought was a broken vertebra—about the fourth vertebra from the skull. There was no other marks on the body except the evidence that he slid. I stepped that off from the place where he hit and the body had not been disturbed and it was about 20 feet. Otto Berg was questioned as to what speed he was travelling when he went around the curve and he said between 20 and 25 miles, and that was possible. After he got around this curve he felt the dual tire jump up in the air and strike the ground again. He stopped the car. He didn't know at the time that Nutt had gone over. He was

(Testimony of John J. Buckley.)

of the opinion that the dual tire on the right hand side of the car struck Nutt when he went over. The examination of the truck we made, the position Nutt was sitting, he couldn't have jumped out of the truck and been hit by the wheels. The car would be by him when he hit the ground. But that might be explained—that jar might be explained that when he got up he had to spring from the bottom of the truck to get out and he might have thought that was the jar. The clothing—he had on a slicker—one of these oil slickers—the marks on his left arm showed no imprint of any tire. Neither did his face or head or chest. You could see no marks at all of tire treads.

Q. Did you see the truck they were driving in?

A. Yes.

Q. Was there any possibility to fall between the body and the back of the cab?

A. No. The bed of the truck——

Q. You saw no evidence of tire marks on the body and in your opinion it wouldn't have been possible for him to fall under the back wheels if he jumped out.

A. If he jumped it would have been utterly impossible for him to strike the rear wheel. That was my opinion anyway because the truck bed is quite high—I think it is about four feet from the ground to the bottom of the bed of the truck then it has a ten-inch high box on it and above that a piece of wood to extend the box up higher. He would have to jump at least eighteen inches to spring over to

(Testimony of John J. Buckley.)

get away from it. By the time he hit the ground the truck would be by him.

Q. Did you see any evidence of foul play?

A. No.

Question by Jury: You think he went over the side of the truck?

A. He had to go out the side of the truck. The position showed that the first marks were on the right hand side outside the travel of the cars.

Q. You think he had been dragged?

A. I know he had been dragged—he skidded along the road.

Mr. Arend: He was dragged by his own force?

A. After he hit the ground, he collapsed, turned over and slid. Mr. Berg who was driving the truck at the time is almost certain in his own mind that the dual tire went over him, but there is no evidence that we can see and we looked for that after we talked to Berg, and we couldn't see any marks of the tire.

Q. Were any bones broken?

A. We couldn't find any. Only the neck. I tried his right ankle, the one he hit the ground with. There was no crunching of the bones and no fracture that we could feel.

(Witness excused.)

RAY JOHNSTON,

being first duly sworn, testified as follows:

Q. State your full name?

A. Ray Edward Johnston.

(Testimony of Ray Johnston.)

Q. Where do you live, Mr. Johnston?

A. Guernsey, Iowa.

Q. Where are you temporarily residing?

A. At Lytle and Green, Big Delta.

Q. Were you acquainted with William Ernest Nutt?

A. Yes, sir.

Q. How long had you known him?

A. Well, for the length of his stay out there—between 3 and 4 weeks.

Q. Did you see him last Friday, June 26th?

A. Yes, sir.

Q. Where did you see him at that time?

A. The last time I seen him—you mean alive?

Q. Yes. A. Was getting out of the truck.

Q. Where at?

A. Four or five miles north or south of Big Delta.

Q. At that time you saw him get out of the truck. What kind of truck?

A. V-8 dump truck. About a '39 or '40.

Q. Who all was in the truck?

A. There were 5 of us. Otto Berg, Jimmy Brown, Harold Johnston, Carl—I don't know Carl's last name—no, Walter. And myself.

Q. Where were you sitting at the time?

A. I was sitting in the left hand corner in the back of the truck on the floor.

Q. Who else was in the back?

A. Harold Johnston was sitting in the back and Ernie was sitting in the right side.

Q. Is Harold related to you?

(Testimony of Ray Johnston.)

A. My brother.

Q. Do they call him Jack?

A. That's right.

Q. Who was in the front? Who was driving?

A. Otto Berg was driving.

Q. Who was with him up in front?

A. Otto was driving and there was Walter and Jimmy Brown.

Q. How did Nutt get out of the car—truck?

A. He raised up and just stepped out—whether accidentally or how—but that's how he done it.

Q. You say he stepped out?

A. That's right.

Q. Did he have to make any effort?

A. No.

Q. Did you see him get up and get out?

A. Yes, sir.

Q. Will you demonstrate just how he did it?

A. He just got up and raised his foot over like that (demonstrating) and said "Let's get out and walk." I thought he was joking and didn't think he meant it.

Q. How fast was the car going?

A. I wouldn't think over 15 miles an hour.

Q. Did he make any other statement right at the time or just before?

A. Yes. He said just before that he saw a moose down there and said "Let's go get it." I pushed him back and said "These are rough roads. You'll fall out," and didn't think anything more of it.

Q. What did you do after he stepped out?

(Testimony of Ray Johnston.)

to the ground. It is several feet down. Those things happen so quick it is hard for a person to see.

(Witness excused.)

OTTO BERG,

being first duly sworn, testified as follows:

Q. Your name is Otto Berg?

A. That's right.

Q. Where is your home?

A. Des Moines, Iowa.

Q. Where are you temporarily residing?

A. Here now?

Q. Yes. A. At the camp at Big Delta.

Q. Were you acquainted with William Ernest Nutt? A. Yes. Just on this job is all.

Q. About how long had you known him.

A. I have known him since—I would say about three weeks.

Q. Did you see him last Friday, June 26th?

A. That was the day of the accident?

Q. Yes. Where did you see him?

A. Well——

Q. Just before the accident?

A. Just before the accident. It was on account of the weather the plant was shut down most of that day. Of course we were tied down there pretty much so at one I was talking in the office with the man in charge and asked him about maybe taking this truck and going down to Delta and wanted to know if there

(Testimony of Otto Berg.)

was anything he wanted. He said "Well that little truck has to be taken down and weighed and I have some checks for Jimmy Brown. You can take those down to him and spend a little time down there", so this Walter Welchell, he asked if he could ride along and I said "Sure". We drove down to Delta and got the truck weighed and came back by the roadhouse and stopped and this gang that had gone down before to load the boat—I didn't know they were down there, and Nutt was one of the gang. Everybody was having a few beers and I drank a bottle of beer myself. The boys got in the truck that they came down there with except this Nutt and two Johnston brothers. They stayed because I was there with my truck and they could go back with it. I took the checks up to Jimmy—I know Jimmy from the camp and we talked for a little while. So the boys came up there. We got ready to start back—of course the fellows taking it as a matter of fact that they would ride in the truck so this Nutt and the two Johnston boys were in the back of the truck and I drove the truck and Welchell and Jimmy Brown were in the front with me. The boys had been drinking but there wasn't any of them that weren't able to get in the truck. They seemed to be feeling good and to be O. K. otherwise.

Q. What were they drinking, beer or whiskey?

A. Possibly both. I couldn't say. The fact of the matter is I got a bottle of beer and it was sitting on the table and somebody drank it. I went out and talked to Rika. I would say they were drinking a little of both. This is something—I can't make my-

(Testimony of Otto Berg.)

self responsible for it in any way and yet it gets you. Driving the truck you couldn't know—I did know when I started out they were all three sitting down in the truck and supposedly we had gone about 11 miles and we weren't driving fast and so far as I was concerned possibly I was just like I am now.

Q. What time of the day did the accident happen?

A. I would say that it was possibly getting right towards 11 o'clock.

Q. At night? A. Yes.

Q. How did you know there had been an accident?

A. That's the thing. I stopped that truck because I knew something happened. There was a jolt or a bounce or whatever you would want to describe it as. Something—what it was I don't know. Something had to call my attention that something had gone wrong. It was just like the truck made a jolt like it had run over a rock and that's what called my attention to stopping the truck and of course I stopped it right there. It flashed through and I wondered if something was wrong. I watch my road pretty close.

Q. Have you determined what caused the jolt?

A. No, I can't determine it.

Q. Were there any rocks in the road?

A. I have never been back there after.

Q. What happened after you stopped the car?

A. After I stopped the car why Ray Johnston was out of the truck and then just a short distance Nutt was lying in the road. We went back there and tried

(Testimony of Otto Berg.)

to give him artificial respiration and do all we possibly could. I knew the man was gone.

Q. What did you do then?

A. I left Ray Johnston and Jimmy Brown there with the body and took the other two boys with me and drove back into camp as fast as I could and told Mr. Cole who is in charge what happened.

Q. Did you go back to the scene of the accident?

A. No, I didn't go back. Naturally that is quite a thing.

Q. Were you there long enough to make an examination of the body?

A. Not any more than—I didn't try to examine the body but it seemed that the body on one side was hurt. I was under the impression that the man's neck was broken, but I am no authority on that.

Q. Did you see any tire tracks across the body??

A. No, sir.

Q. Did you hear any quarreling?

A. Not a bit. None whatever. I am speaking of something there. In my opinion, being right with the boys I am satisfied there was nothing of that kind. The three of them separated and stayed and naturally the three of them were piling it together. There was no quarrelling or arguments amongst them prior to the time they got in the truck. What happened in the truck, I couldn't see because I was driving. I looked back a couple of times. We had just gone three or four miles I believe and——

Q. Did any other cars pass you while you were in that vicinity?

(Testimony of Otto Berg.)

A. No. There was—it seems to me that there was a truck heading North as we neared camp after the accident.

(Witness excused.)

(HAROLD WILLIAM) JACK JOHNSTON,

being first duly sworn, testified as follows:

Q. Will you state your full name, please?

A. Harold William Johnston.

Q. You are a brother of Ray Johnston?

A. Yes.

Q. Where is your home?

A. Deep River, Iowa.

Q. Where are you temporarily residing?

A. At Big Delta.

Q. Were you acquainted with William Ernest Nutt?

A. Not until he came here to work.

Q. About how long ago was that?

A. I imagine about four weeks, or something like that.

Q. Did you see him last Friday, June 26th?

A. Yes.

Q. Where at?

A. I seen him at camp and then when we went to load the boat.

Q. Where at? A. At Big Delta.

Q. What were you doing at Big Delta besides loading the barge?

A. I worked around there most of the afternoon

(Testimony of Harold William Johnston.)

and went across the river on the ferry and came home on a truck.

Q. Who was driving the truck?

A. Otto Berg.

Q. What time of the day did you leave for home?

A. I don't know exactly the time we did leave Big Delta. It was about 10:30 or 11 o'clock when the accident happened, but I had been out to Jimmy Brown's cabin.

Q. Where were you riding?

A. I was riding in the back end on the box.

Q. Who was with you?

A. Ernest Nutt and my brother, Ray.

Q. Who else was in the front with Otto Berg?

A. Jimmy Brown and Walter Welchell.

Q. You spoke of an accident—where did that happen?

A. I couldn't tell you exactly—about, I imagine, possibly 2½ or 3 miles, something like that. I'm all turned around in my directions.

Q. Towards camp from Big Delta? South on the highway?

A. That's right.

Q. Tell the jury the nature of the accident that happened.

A. I haven't got a whole lot to tell. I wasn't looking at the time he fell or jumped. The first thing I knew was when someone hollered and I turned. The first thing I seen he hit the ground and was rolling. But I didn't see him fall or didn't see him jump.

Q. What were you doing?

(Testimony of Harold William Johnston.)

A. I was sitting on the box in the front end and he was further back than I was.

Q. Where was your brother Ray?

A. He was behind me. I was clear in the front.

Q. Were you talking to Nutt?

A. Not at the time. I had been. I don't know just exactly the length of the time before but not very long.

Q. You fellows had been drinking quite a bit?

A. No. We had, I would venture to say, not over 3 or 4 bottles of beer.

Q. Did you have any whiskey?

A. One or two drinks.

Q. Did you feel the effects of your drinks?

A. Some. Not much. Not that I couldn't get around and couldn't walk straight.

Q. How about Nutt. Did he show any evidence of being too far?

A. Not more than anyone else. Just laughing and having a good time. So far as not being able to walk, he wasn't that way at all.

Q. Did you hear him say anything before he left the truck? A. No, I didn't.

Q. Did you feel sleepy at the time? A. No.

Q. Did you feel anything strike the car, or the car strike anything?

A. No. The road was so rough.

Q. What made the driver stop?

A. He said he noticed it, but being in the back and we weren't watching the road like the driver was.

(Testimony of Harold William Johnston.)

Q. How fast do you think you were going?

A. Not over 20 miles an hour I would say. 20 or 25 at the most.

Q. Was the road rough?

A. Not in that particular spot.

Q. Did the accident happen on a curve or a straight of way?

A. We were just around the curve. There is a little straight stretch, about 200 yards.

Q. When the car stopped what did you do?

A. I jumped out of the truck and by that time a couple of the others were back where he was lying and they told us to hurry on to camp and to get a doctor. I didn't get back to the body.

Q. Then you wouldn't know whether he was dead?

A. I didn't know.

Q. You did not go down to examine the body?

A. No.

Q. You and who else went to camp?

A. There was Walter Welchell, Otto Berg and I, I believe. That was all.

Q. After you got to camp did you come back again?

A. No.

Q. Did you hear—had Nutt been quarreling with anybody?

A. Not to my knowledge.

Q. Did he seem to have any worries? Did he express any to you?

A. No. I had worked with him practically all the time since he had been to camp.

Q. What kind of work did he do?

A. He was just a laborer.

(Testimony of Harold William Johnston.)

Q. Where was his home?

A. Indianola, Iowa, I believe.

Q. How old a man would you say he was?

A. Well—about 50 years old if I heard him say.
I don't whether that was exact.

Q. Did he have a family?

A. Yes. I don't know how many children. He had some children. He told about some living in California and I heard him tell about losing his wife some time in January. I am not sure when.

Q. How tall a man was he?

A. Approximately 6 foot or 6 foot 1.

Question by Coroner: When you speak of the way you were sitting in the truck going out—you were sitting closest to the cab?

A. That's right.

Q. Ray was sitting next? A. That's right.

Q. Mr. Nutt was farther back in the truck than he. In other words he was two-thirds of the way back in the truck?

A. I imagine approximately.

Question by Jury: Didn't anybody see him jump out of the truck?

A. I don't know.

Q. He went out over the side?

A. I don't know. When I seen him rolling or bouncing, I would say he went over the side because he was almost to the very edge of the road not over a couple of feet from the ditch along the side of the road. I would imagine he went over the side. I didn't see it.

(Witness excused.)

JAMES F. BROWN,

being first duly sworn, testified as follows:

Q. What is your full name?

A. James F. Brown.

Q. Where is your home? A. Big Delta.

Q. That's where you are at the present?

A. That's where my home is.

Q. That is your regular home? A. Yes.

Q. Were you acquainted with William Ernest Nutt? A. Slightly. Not very well.

Q. Did you see him last Friday, June 26th?

A. Yes.

Q. Where did you see him?

A. I saw him at my place. I saw him last on the roadway.

Q. Where is your place? A. At Big Delta.

Q. You saw him on the roadway?

A. That's the last I saw him.

Q. How did you happen to be on the road? You were traveling in a truck?

A. Yes, we were in a truck.

Q. Where were you going?

A. To Jarvis Creek.

Q. Who all was in the truck?

A. There was six of us.

Q. Do you remember their names?

A. There was—well you know how it is—Walt and Jack and Ott and Ray and Ernie and myself. I believe there was six altogether. Three in the back and three in the front.

Q. Who was sitting in the back?

(Testimony of James F. Brown.)

A. Jack and Ray and Ernie.

Q. The two brothers and Ernie?

A. And Ernie.

Q. Where were they sitting in respect to the box?

A. That I don't recall.

Q. You were in front with Otto Berg and Walter?

A. And Walt.

Q. About what time did the accident happen?

A. I would say about 10:30 or 11 o'clock, but I am not sure of the time.

Q. When did you first know there had been an accident?

A. When we stopped the truck.

Q. How did the truck happen to stop?

A. Well, all I can recall was that—I remember a few minutes before the truck stopped I glanced back and saw Ernie standing up in the truck.

Q. You saw him standing?

A. Yes, I am pretty sure of that. Some of the fellows say he wasn't, but I am positive, and I turned my head back and got to talking and then the next thing I knew just before we stopped there was a sort of a bump or a jar and we stopped. Then Ray had jumped out of the truck. I am sure of that. I was out and was going back to where Ernie was lying on the ground. I said maybe his wind is knocked out so let's give him artificial respiration, so I held his head and was counting and then I looked and saw he was really dying, so I said "It's no use." We stopped and one of the boys got something out of the truck and put it over his face and I

(Testimony of James F. Brown.)

told the boys to go back to the camp and tell Mr. Cole and call the Marshal.

Q. You stayed with the body?

A. Johnston and myself. We built fires on both sides of the body.

Q. Any cars pass while you were there?

A. I think there was one. No, I am not quite sure. I think George Edgecombe passed. I sort of lost my head.

Q. Did you stay there until the Marshal came?

A. Yes, I was present when they came. Mr. Buckley and Mr. Growden.

Q. You mention a jolt—have you determined what caused the jolt?

A. No. I wouldn't venture to say whether it was a bump in the road or whether the car could have hit him—I don't know. I can't associate that jolt with anything.

Q. Did you hear them talking in back?

A. No, you couldn't hear. We were talking in front.

Q. Was there any evidence of foul play at all.

A. No. I wouldn't think so. We were all friends and I can't imagine anything like that. I should hesitate to say there was.

Q. The party had been drinking?

A. We all had a few drinks.

Q. Did Nutt appear intoxicated when he got into the truck? A. Yes, he was.

Q. In your opinion he appeared to be drunk?

A. At my place he was so much so that I asked

(Testimony of James F. Brown.)

him to lie down on the bed. He laid on the bed while we were talking and when we got ready to go he was all right.

Q. Were the Johnston boys very far gone?

A. No. To be perfectly frank I was the worst of all. I was pretty tight myself. That's one reason I'm inclined to be pretty vague.

Q. You are the one who suggested the artificial respiration? A. Yes.

(Witness excused.)

CERTIFICATE

I, Emma M. Cook, Fairbanks, Alaska, hereby certify:

That I was the Court Reporter in the Commissioner's Court for Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska; that I attended the inquest entitled "In the Matter of the Inquest Upon the Body of William Ernest Nutt, Deceased," No. 176, at Fairbanks, Alaska, on June 29th, 1942, and took down in shorthand the testimony given and proceedings had thereat; that I thereafter transcribed the testimony of all witnesses, namely, Walter Welchell, Dr. A. J. Schaible, John J. Buckley, Ray Johnston, Otto Berg, Harold Johnston and James F. Brown, and the foregoing pages numbered 1 to 16, both inclusive, comprise a full,

true and correct statement and transcript of such testimony and proceedings.

Dated at Fairbanks, Alaska, this 23rd day of July, 1942.

EMMA M. COOK

Before the United States Employee's
Compensation Commission.

In the Matter of the Claim for Compensation
matter of the death of William Earnest Nutt.

INTERROGATORIES AND ANSWERS OF
A. A. LYON

Deposition of A. A. Lyon, taken at his office at 307 Masonic Temple Building, Des Moines, Polk County, Iowa, at 1:15 p. m. February 12, 1944.

Taken by S. S. Wright, Certified Shorthand Reporter and Notary Public, 417 Court House, Des Moines, Iowa.

Int. 1: What is your name and address and official position with your employer on June 26, 1942 and the period thereof?

A. A. A. Lyon. Engineer and superintendent of the Lytle-Green Construction Company.

Int. 2: What is the name and address of your employer who employed you in June, 1942?

A. Lytle-Green Construction Company, 307 Masonic Temple Building.

Int. 3: Were you personally acquainted with

(Deposition of A. A. Lyon.)

William Earnest Nutt who died on or about June 26, 1942?

A. Only as an employe.

Int. 4: Who was William Earnest Nutt's employers in June, 1942 at the time of his death, and what were his wages?

A. We were his employers. He was classed as a laborer at one dollar an hour. That was our labor schedule up there last year.

Int. 5: How long had he been in the employ of his employer prior to the time of his death?

A. I don't have a complete record of the total employment. The first day on the pay roll was June 1, 1942. The last day was June 26th, the day he died, that is the record we have here now.

Int. 6: State what work he was doing on the afternoon and evening of June 26th, 1942?

A. Miscellaneous common labor from 1:00 p.m. to 4:00 p.m., June 26, 1942, laid off for the day at 4:00 p.m.

Int. 7: What time of day did he complete his work?

A. 4:00 p.m. June 26th.

Int. 8: When he was working where was he working, and was he working on a boat?

A. He had been assisting six other men load a boat at Big Delta, Alaska, between 1:00 p.m. and 4:00 p.m.

Int. 9: If he was working on a boat, what was he doing?

A. He had been assisting six other men load a

(Deposition of A. A. Lyon.)

boat at Big Delta, Alaska, between 1:00 p.m. and 4:00 p.m.

Int. 10: Who was the foreman over William Earnest Nutt at that time? Please give his name and address and present location.

A. Bill Green, the foreman, took a crew of seven men to Big Delta to load a boat. The present address of Bill Green, the foreman, is not known.

Int. 11: Where was William Earnest Nutt staying in June, 1942, that is, where did he eat and sleep?

A. At the Company camp near the Big Delta Airport in Alaska.

Int. 12: Did his employer maintain the place where he ate and slept; and if so, how far was it from the place where he was working on the afternoon of June 26, 1942?

A. Yes, the point of loading the boat over thirteen miles north of the camp.

Int. 13: What provisions for transportation did his employer provide for transporting William Earnest Nutt and the other workers from the place where they ate and slept to the place where they worked?

A. On a Company truck to the place where they worked.

Int. 14: State generally whether his employer did provide a place for William Earnest Nutt to work and a place for him to stay and a place for him to eat, and transportation back and forth be-

(Deposition of A. A. Lyon.)

tween these different places; and if so, where these different places were all in June, 1942?

A. Yes, all within the area of activity in connection with the construction of the Big Delta Airport.

Int. 15: Was the place where William Earnest Nutt stayed in June, 1942 a regular camp or barracks maintained by his employer for the use of his employer's employees?

A. Yes.

Int. 16: How far from the place where William Earnest Nutt was working on the day he was killed was the place he slept?

A. Twelve or thirteen miles.

Int. 17: Was there other transportation available to William Earnest Nutt to take him from his place of work to the place where the company maintained a camp for him to stay? This question relates to or about the time of William Earnest Nutt's death in June, 1942.

A. I don't know.

Int. 18: If other transportation was available, what was this transportation and how was it available?

A. Also unknown.

Int. 19: Did you as an employee of your employer, who was likewise William Earnest Nutt's employer, have any charge over him on the day he was killed in June, 1942?

A. No, I was not on the job.

Int. 20: Were you the foreman over him at the

(Deposition of A. A. Lyon.)

time he was working in the afternoon of June 26, 1942?

A. No.

Int. 21: What, if anything, did you tell him on the afternoon or evening of his death in reference to riding back to the Company's camp in a Company truck?

A. Nothing.

Int. 22: State if you know who the owner of the truck was in which truck William Earnest Nutt was riding at the time of his death.

A. A truck owned by the company.

Int. 23: State if you know who was the employer of the other men who were riding in the truck at the time William Earnest Nutt was killed.

A. Our Company.

Int. 24: When did you first learn of the death of William Earnest Nutt?

A. Late in the evening of the same day by telephone.

Int. 25: Was William Earnest Nutt's death generally known among the employees of his employer within the next day or so after his death?

A. I presume so.

Int. 26: When and how did you communicate the news of William Earnest Nutt's death to your superiors?

A. The matter was taken care of by those on the job.

Int. 27: Did you attend the coroner's inquest on

(Deposition of A. A. Lyon.)

the death of William Earnest Nutt before Honorable William N. Growden on June 29, 1942?

A. No.

Int. 28: State if you know who the insurance carrier for William Earnest Nutt's employer was carrying insurance against liability under the provisions of the Longshoremen's and Harbor Workers' Compensation Act. State whether this insurance carrier was United States Fidelity and Guaranty Company.

A. I don't know.

Int. 29: State generally what if anything you know about the death of William Earnest Nutt, his employment at or shortly prior to his death including the afternoon before his death, and anything further which you deem of importance in reference to his employment or death which has not been asked you in prior interrogatories.

A. I don't know about that. I wasn't around there. All I have is hearsay.

Cross-Interrogatories

Int. 1: State in detail what the duties of the deceased, William Earnest Nutt, were as an employee of C. F. Lytle Company and Green Construction Company.

A. Miscellaneous laborer in connection with the airport construction in territory of Alaska.

Int. 2: What were his working hours and where was he assigned to work on the day on which he met his death?

A. Working hours ordinarily from 7:00 to 6:00,

(Deposition of A. A. Lyon.)

but on the day of his death I understand that due to weather conditions he worked only from 1:00 p.m. to 4:00 p.m. assisting in loading a boat on the river about twelve or thirteen miles north of the camp.

Int. 3: When had he completed his work on the day of his death?

A. 4:00 p.m.

Int. 4: At what time did the crew with which he was working on the day of his death ordinarily complete their work and return to their quarters?

A. Their work was completed at 4:00 p.m.

Int. 5. State if you know on what time the crew completed their work at the place they were assigned on the day of the death of William Earnest Nutt?

A. 4:00 p.m. of that day, and the other men with the exception of the deceased and two others, returned to their quarters.

Int. 6: When and how did the crew leave their place of work on this day?

A. I presume on the truck they used to go to the job.

Int. 7: Did the deceased leave with them on this day?

A. Apparently not, I don't know.

Int. 8: If the answer to the above is in the negative, what did the deceased do after the rest of the crew left the place where they were working?

A. I don't know.

Int. 9: Did the deceased return from the place where he was working on the day of his death on a truck provided for this purpose?

(Deposition of A. A. Lyon.)

A. According to reports, he didn't return on the truck provided.

Int. 10: If the answer to the above is "No," please state when the deceased did return or attempt to return from the vicinity where he was working.

A. According to our job report he left for camp about 10:30 p.m.

Int. 11: If he returned via truck, by whom and for what purpose was the truck on which he was riding being operated at the time of his death?

A. The truck reportedly was operated by Otto Berg, a Company employee, sent to Big Delta during the evening on Company business.

Int. 12: Was it being operated for the purpose of the employer or for the purpose of the persons driving or in charge of the truck?

A. For the purpose of the employer, I presume.

Int. 13: State if you know whether the other men in the truck with the deceased at the time of his death, were working or had been working or were on the business of C. F. Lytle Company and Green Construction Company.

A. According to our job reports, Otto Berg, the driver of the truck was the only man on Company business.

Int. 14: State if you know what the deceased had been doing immediately prior to getting on the truck from which he met his death.

A. Witnesses say that the deceased had been drinking just prior to getting on the truck.

(Deposition of A. A. Lyon.)

Int. 15: State, if you know, whether or not the deceased was intoxicated at the time of his death?

A. I don't know.

Int. 16: State if you know if C. F. Lytle and Green Construction Company provided transportation for their workmen at their place of work at times other than the regular shift.

A. Yes, occasionally, if in charge of a responsible driver.

CERTIFICATE

State of Iowa,
Polk County—ss.

I, S. S. Wright, a Certified Shorthand Reporter in and for the State of Iowa, and a Notary Public in and for Polk County, Iowa, hereby certify that on Saturday, February 12, 1944, at 1:15 p.m., at the office of A. A. Lyon, at 307 Masonic Temple Building, Des Moines, Polk County, Iowa, I took in shorthand the answers to the interrogatories and cross-interrogatories hereto attached, and I further certify that I have transcribed said answers into longhand as above set out, and hereby certify that the foregoing transcript is a full, true and complete transcript of said interrogatories and answers as the same were taken by me in shorthand, and that the said transcript above set out contains all the pro-

ceedings had at said time and place. Witness my hand this 19th day of February, 1944.

(Seal) S. S. WRIGHT,
Notary Public in and for Polk County, Iowa.

[Printer's Note: Attached hereto are the interrogatories and cross-interrogatories which are duplicated in the foregoing deposition.]

Before the United States Employees' Compensation
Commission

In the Matter of the Claim for Compensation in the
death of William Earnest Nutt.

INTERROGATORIES PROPOUNDED TO AND
ANSWERS OF WILLIAM H. GREEN

Deposition of William H. Green, Sioux City, Iowa, taken at Sioux City, Woodbury County, Iowa, on Wednesday, March 1, 1944, in answer to written interrogatories, before Jarvis Campbell, Notary Public in and for Woodbury County, Iowa, and also a Certified Shorthand Reporter, 301 Court House, Sioux City, Iowa.

William H. Green, of Sioux City, Iowa, being first duly sworn, testified as follows in answer to the written interrogatories propounded to him as hereinafter set out, at Sioux City, Iowa, on Wednesday, March 1, 1944:

(Deposition of William H. Green.)

Direct Interrogatories

Int. 1: What is your name and address and official position with your employer, on June 26, 1942 and the period thereabouts?

A. My name is William H. Green and I live at 1010 Twenty-eighth Street, Sioux City, Iowa. I was foreman for C. F. Lytle Company and Green Construction Company, and had charge of electrical wiring.

Int. 2: What is the name and address of your employer who employed you in June, 1942?

A. C. F. Lytle Company and Green Construction Company, Des Moines, Iowa.

Int. 3: Were you personally acquainted with William Earnest Nutt who died on or about June 26, 1942?

A. No, I was not personally acquainted with him. I knew who he was and knew he was working on this job.

Int. 4: Who was William Earnest Nutt's employers in June, 1942 at the time of his death, and what were his wages?

A. He was employed on the Big Delta air base job by C. F. Lytle Company and Green Construction Company, I do not know what his wages were.

Int. 5: How long had he been in the employ of his employer prior to the time of his death?

A. I don't know.

Int. 6: State what work he was doing on the afternoon and evening of June 26th, 1942?

A. Well, that afternoon we were loading ma-

(Deposition of William H. Green.)

terial on a small boat to be shipped up the river and he was a member of the crew engaged in this work.

Int. 7: What time of day did he complete his work?

A. I would say it was late in the afternoon. I cannot give a more definite time as I cannot remember.

Int. 8: When he was working where was he working, and was he working on a boat?

A. He was working at loading material on a boat. The place where he was working would be at the Big Delta River bank.

Int. 9: If he was working on a boat, what was he doing?

A. Well, he was loading material on the boat along with the other men.

Int. 10: Who was the foreman over William Earnest Nutt at that time? Please give his name and address and present location.

A. I was the foreman over him on that particular day. My present address is 1010 Twenty-eighth Street, Sioux City, Iowa, and I am presently located and working in Sioux City, Iowa.

Int. 11: Where was William Earnest Nutt staying in June, 1942, that is, where did he eat and sleep?

A. Well, Lytle and Green had barracks at this Big Delta air base and he was eating and sleeping there.

Int. 12: Did his employer maintain the place where he ate and slept; and if so, how far was it

(Deposition of William H. Green.)

from the place where he was working on the afternoon of June 26, 1942?

A. His employer did maintain the place where he ate and slept. This was about 10 miles from the place where he was working on the afternoon of June 26, 1942; however, I am not certain as to the exact distance.

Int. 13: What provisions for transportation did his employer provide for transporting William Earnest Nutt and the other workers from the place where they ate and slept to the place where they worked?

A. The company had trucks that were used to carry material on the construction job and the workers would ride to and from work on these trucks.

Int. 14: State generally whether his employer did provide a place for William Earnest Nutt to work and a place for him to stay and a place for him to eat, and transportation back and forth between these different places; and if so, where these different places were all in June, 1942?

A. The company did provide a place for him to work and a place for him to stay and for him to eat and provided transportation on their trucks back and forth between the different places where the men would be working. In June 1942 we were working at the Big Delta air base and he was staying at Big Delta air base; we had barracks right there and a cook and mess hall.

Int. 15: Was the place where William Earnest Nutt stayed in June, 1942 a regular camp or bar-

(Deposition of William H. Green.)

racks maintained by his employer for the use of his employer's employees?

A. Yes, that is right, it was a regular place for the use of the employees.

Int. 16: How far from the place where William Earnest Nutt was working on the day he was killed was the place he slept?

A. I would say it was about 10 miles but I don't know exactly.

Int. 17: Was there other transportation available to William Earnest Nutt to take him from his place of work to the place where the company maintained a camp for him to stay? This question relates to or about the time of William Earnest Nutt's death in June, 1942.

A. There was no other transportation that I know of except the trucks going up and down the highway.

Int. 18: If other transportation was available, what was this transportation and how was it available?

A. The transportation available would be the Lytle and Green trucks going up and down the highway, they were hauling these supplies up and down the highway. You see, their trucks were going up and down the highway all the time, day and night, back and forth from clear down from Veldeze to Fairbanks.

Int. 19: Did you as an employee of your employer, who was likewise William Earnest Nutt's

(Deposition of William H. Green.)

employer, have any charge over him on the day he was killed in June, 1942?

A. He was working on the crew that afternoon that I was in charge of as foreman.

Int. 20: Were you the foreman over him at the time he was working in the afternoon of June 26, 1942? A. Yes.

Int. 21: What, if anything, did you tell him on the afternoon or evening of his death in reference to riding back to the Company's camp in a Company truck?

A. I did not tell him anything in reference to riding back to the company's camp in a company truck.

Int. 22: State if you know who the owner of the truck was in which truck William Earnest Nutt was riding at the time of his death.

A. I do not know.

Int. 23: State if you know who was the employer of the other men who were riding in the truck at the time William Earnest Nutt was killed.

A. I do not know. I don't know anything about who was riding in the truck at the time he was killed.

Int. 24: When did you first learn of the death of William Earnest Nutt?

A. Well, I heard about that later on that same evening after supper.

Int. 25: Was William Earnest Nutt's death generally known among the employees of his employer within the next day or so after his death?

A. Yes, they all knew about it the next day.

(Deposition of William H. Green.)

Int. 26: When and how did you communicate the news of William Earnest Nutt's death to your superiors?

A. I did not communicate the news of his death to my superiors.

Int. 27: Did you attend the coroner's inquest on the death of William Earnest Nutt before Honorable William N. Growden on June 29, 1942?

A. No, I did not.

Int. 28: State if you know who the insurance carrier for William Earnest Nutt's employer was carrying insurance against liability under the provisions of the Longshoremen's and Harbor Workers' Compensation Act. State whether this insurance carrier was United States Fidelity and Guaranty Company.

A. I don't know a thing about who their insurance was with.

Int. 29: State generally what if anything you know about the death of William Earnest Nutt, his employment at or shortly prior to his death including the afternoon before his death, and anything further which you deem of importance in reference to his employment or death which has not been asked you in prior interrogatories.

A. I don't know anything about the death of Nutt. I don't know anything about his work except that on this particular day he was one of the men sent up there to load this boat and I was in charge of the crew. There is nothing further that I have to add.

(Deposition of William H. Green.)

Cross-Interrogatories

Int. 1: State in detail what the duties of the deceased, William Earnest Nutt, were as an employee of C. F. Lytle Company and Green Construction Company.

A. I don't know what his duties were except that on this particular day he was working on the crew that I was in charge of; he was not regularly working under me and I don't know what his duties were; he was just assigned to the crew on this day to load this boat with material; we were loading electrical material and he was sent up to help load the boat; the company ordered me to see that this electrical material got on its way and sent this crew to do the loading.

Int. 2: What were his working hours and where was he assigned to work on the day on which he met his death?

A. I don't know what his working hours were. He was assigned up to this Big Delta River bank to load this boat.

Int. 3: When had he completed his work on the day of his death?

A. Well, it was late that afternoon when he completed his work; I do not know the exact time.

Int. 4: At what time did the crew with which he was working on the day of his death ordinarily complete their work and return to their quarters?

A. On this particular day this crew of men had been assigned to load the boat and finish the job, which was completed late that afternoon. This was

(Deposition of William H. Green.)

not a crew that I regularly had charge of and I do not know their hours, except that we were to finish loading this boat before quitting for the day.

Int. 5: State, if you know, on what time the crew completed their work at the place they were assigned on the day of the death of William Earnest Nutt.

A. We finished late that afternoon but I do not remember the exact time we finished.

Int. 6: When and how did the crew leave their place of work on this day?

A. The crew left in the company trucks after finishing the work, but I cannot remember what time it was except that it was late in the afternoon.

Int. 7: Did the deceased leave with them on this day?

A. He did not leave on the truck that I was riding on and I do not personally know how he went back to camp.

Int. 8: If the answer to the above is in the negative, what did the deceased do after the rest of the crew left the place where they were working?

A. I do not know.

Int. 9: Did the deceased return from the place where he was working on the day of his death on a truck provided for this purpose?

A. I do not know.

Int. 10: If the answer to the above is "no", please state when the deceased did return or attempt to return from the vicinity where he was working.

A. I do not know.

Int. 11: If he returned via truck, by whom and

(Deposition of William H. Green.)

for what purpose was the truck on which he was riding being operated at the time of his death?

A. I do not know, I can't answer this question.

Int. 12: Was it being operated for the purpose of the employer or for the purpose of the persons driving or in charge of the truck?

A. I do not know.

Int. 13: State, if you know, whether the other men in the truck with the deceased at the time of his death, were working or had been working or were on the business of C. F. Lytle Company and Green Construction Company.

A. I do not know.

Int. 14: State, if you know, what the deceased had been doing immediately prior to getting on the truck from which he met his death.

A. I do not know.

Int. 15: State, if you know, whether or not the deceased was intoxicated at the time of his death.

A. I do not know.

Int. 16: State, if you know, if C. F. Lytle and Green Construction Company provided transportation for their workmen at their place of work at times other than the regular shift.

A. They provided transportation at all times in the company trucks; the men would ride in the company trucks back and forth at all times.

WILLIAM H. GREEN

Subscribed in my presence and sworn to before me this 7th day of March, 1944.

(Seal) JARVIS CAMPBELL,

Notary Public in and for Woodbury County, Iowa.

My commission expires July 4, 1945.

CERTIFICATE

State of Iowa,
Woodbury County—ss.

I, Jarvis Campbell, Notary Public in and for Woodbury County, Iowa, and also a Certified Shorthand Reporter in and for the State of Iowa, hereby certify that on Wednesday, March 1, 1944, at Sioux City, Woodbury County, Iowa, William H. Green, of Sioux City, Iowa, appeared before me for the purpose of answering the above and foregoing written interrogatories; that before giving his answers as above set forth he was by me first duly sworn to tell the truth, the whole truth and nothing but the truth; that said written interrogatories were propounded to the said William H. Green by me and that I took down in shorthand his answers thereto; that I have transcribed said answers into typewriting as above set out, and that the above and foregoing answers as herein set out are the answers given by the said William H. Green at the said time; that on March 7, 1944, the said William H. Green, after reading the said written interrogatories and his answers given thereto, subscribed his name at the end thereof as set out and shown on page 11 hereof.

Witness my hand this 7th day of March, 1944.

(Seal) JARVIS CAMPBELL,
Notary Public in and for Woodbury County, Iowa.

My commission expires July 4, 1945.

Before the United States Employee's Compensation
Commission

In the Matter of the Claim for Compensation in
the Death of William Earnest Nutt.

INTERROGATORIES AND ANSWERS OF
RALPH GREEN

Deposition of Mr. Ralph Green, taken at his office at 317 Masonic Temple Building, Des Moines, Polk County, Iowa, at 10 a. m. on Saturday, February 12, 1944.

Taken by S. S. Wright, Certified Shorthand Reporter and Notary Public, 417 Court House, Des Moines, Iowa.

Int. 1. What is your name and address and official position with your employer, on June 26, 1942 and the period thereof?

A. Ralph Green. I own the Green Construction Company and act as attorney in fact for the C. F. Lytle Company, acting as general manager for the co-partnership.

Int. 2. What is the name and address of your employer who employed you in June, 1942?

A. Well, I am self-employed.

Int. 3. Were you personally acquainted with William Earnest Nutt who died on or about June 26, 1942? A. No, I was not.

Int. 4. Who was William Earnest Nutt's employer in June, 1942, at the time of his death and what were his wages?

A. Well, it would be C. F. Lytle Company and

(Deposition of Ralph Green.)

Greene Construction Company were the employers. I cannot tell you what his wage was. I really don't know. Whatever his wage classification was is what it would be. I think Mr. Lyons can give you that information, I am quite sure.

Int. 5. How long had he been in the employ of his employer prior to the time of his death?

A. I cannot answer that.

Int. 6. State what work he was doing on the afternoon and evening of June 26, 1942?

A. I cannot tell you that.

Int. 7. What time of day did he complete his work?

A. That is beyond me too, I do not know the circumstances regarding it at all.

Int. 8. When he was working where was he working, and was he working on a boat?

A. Well, I don't know, he was working on a job at Big Delta which was the airport in Alaska. I don't know what his particular duties might have been at that time.

Int. 9. If he was working on a boat, what was he doing?

A. I wouldn't know.

Int. 10. Who was the foreman over William Earnest Nutt at that time? Please give his name and address and present location.

A. Al Lyons was the general superintendent. I don't know who his particular foreman might have been.

Int. 11. Where was William Earnest Nutt stay-

(Deposition of Ralph Green.)

ing in June, 1942 that is, where did he eat and sleep?

A. Well, I assume that he stayed with the rest of the men at the camp at the job.

Int. 12. Did his employer maintain the place where he ate and slept, and if so, how far was it from the place where he was working on the afternoon of June 26, 1942?

A. Well, we maintain the place that they do eat and sleep, but I don't know where he might have been working on that particular day. The living and eating quarters was at the side of the work on the main job. He might have been on some special assignment, I don't know about that.

Int. 13. What provisions for transportation did his employer provide for transporting William Earnest Nutt and the other workers from the place where they ate and slept to the place where they worked?

A. I cannot tell you that, I don't know what arrangements they had.

Int. 14. State generally whether his employer did provide a place for William Earnest Nutt to work and a place for him to stay and a place for him to eat, and transportation back and forth between these different places; and if so, where these different places were all in June, 1942?

A. Generally speaking, his work was at the location of the camp, and there was transportation necessary other than the ability to walk to the

(Deposition of Ralph Green.)

work. I don't know what this particular case might have been.

Int. 15. Was the place where William Earnest Nutt stayed in June, 1942, a regular camp or barracks maintained by his employer for the use of his employer's employees? A. That is right.

Int. 16. How far from the place where William Earnest Nutt was working on the day he was killed was the place where he slept?

A. I could not tell you that, I don't know what his particular duties were on that particular day.

Int. 17. Was there other transportation available to William Earnest Nutt to take him from his place of work to the place where the company maintained a camp for him to stay? This question relates to or about the time of William Earnest Nutt's death in June, 1942.

A. I cannot answer that.

Int. 18. If other transportation was available, what was this transportation, and how was it available? A. I cannot answer that.

Int. 19. Did you, as an employee of your employer, who was likewise William Earnest Nutt's employer, have any charge over him on the day he was killed in June, 1942?

A. I don't know what the arrangements might have been on that particular day.

Int. 20. Were you the foreman over him at the time he was working in the afternoon of June 26, 1942? A. No.

Int. 21. What, if anything, did you tell him

(Deposition of Ralph Green.)

on the afternoon or evening of his death in reference to riding back to the company's camp in a company truck?

A. I told him nothing, I was not at the job site at all.

Int. 22. State if you know who the owner of the truck was in which truck William Earnest Nutt was riding at the time of his death.

A. I understood it was our truck, but I am not positive about that even.

Int. 23. State if you know who was the employer of the other men who were riding in the truck at the time William Earnest Nutt was killed?

A. I don't know who the other men were.

Int. 24. When did you first learn of the death of William Earnest Nutt?

A. I cannot answer on that positively, and I am not sure what date they informed me of.

Int. 25. Was William Earnest Nutt's death generally known among the employees of his employer within the next day or so after his death?

A. I think it was known immediately.

Int. 26. When and how did you communicate the news of William Earnest Nutt's death to your superiors?

A. Well, I have no superiors. I think Mr. Lyons informed me of his death.

Int. 27. Did you attend the coroner's inquest on the death of William Earnest Nutt before Honorable William N. Growden on June 27, 1942?

A. No.

(Deposition of Ralph Green.)

Int. 28. State, if you know, who the insurance carrier for William Earnest Nutt's employer was carrying insurance against liability under the provisions of the Longshoremen's and Harbor Workers' Compensation Act. State whether this insurance carried was United States Fidelity and Guaranty Company.

A. Yes, I am sure it was the United States Fidelity and Guaranty Company.

Int. 29. State generally what, if anything, you know about the death of William Earnest Nutt, his employment at or shortly prior to his death including the afternoon before his death, and anything further which you deem of importance in reference to his employment or death which has not been asked you in prior interrogatories?

A. I do not know that I can add anything to that, I am not familiar enough with the case to know the particulars.

Cross-Interrogatories

Int. 1. State in detail what the duties of the deceased, William Earnest Nutt were as an employee of the C. F. Lytle Company and Green Construction Company.

A. I was not present on this job at the time of this man's death and I am not familiar enough with it to know the details.

Int. 2. What were his working hours and where

(Deposition of Ralph Green.)

was he assigned to work on the day on which he met his death? A. I don't know.

Int. 3. When had he completed his work on the day of his death?

A. I cannot answer that.

Int. 4. At what time did the crew with which he was working on the day of his death ordinarily complete their work and return to their quarters?

A. I cannot answer that.

Int. 5. State, if you know, on what time the crew completed their work at the place they were assigned on the day of the death of William Earnest Nutt?

A. I don't know that.

Int. 6. When and how did the crew leave their place of work on this day?

A. I cannot answer that.

Int. 7. Did the deceased leave with them on this day? A. I don't know.

Int. 8. If the answer to the above is in the negative, what did the deceased do after the rest of the crew left the place where they were working?

A. I don't know.

Int. 9. Did the deceased return from the place where he was working on the day of his death on a truck provided for this purpose?

A. I don't know.

Int. 10. If the answer to the above is "No," please state when the deceased did return or attempt to return from the vicinity where he was working? A. I don't know that.

(Deposition of Ralph Green.)

Int. 11. If he returned via truck, by whom and for what purpose was the truck on which he was riding being operated at the time of his death?

A. I don't know that.

Int. 12. Was it being operated for the purpose of the employer or for the purpose of the persons driving or in charge of the truck?

A. I cannot answer that.

Int. 13. State, if you know, whether the other men in the truck with the deceased at the time of his death, were working or had been working or were on the business of C. F. Lytle Company and Green Construction Company.

A. I don't know that.

Int. 14. State, if you know, what the deceased had been doing immediately prior to getting on the truck from which he met his death?

A. I don't know that.

Int. 15. State, if you know, whether or not the deceased was intoxicated at the time of his death?

A. I don't know that.

Int. 16. State, if you know, if C. F. Lytle and Green Construction Company provided transportation for their workmen at their place of work at times other than the regular shift?

A. I don't know what the particular arrangements were on this job.

CERTIFICATE

State of Iowa,

Polk County—ss.

I, S. S. Wright, a Certified Shorthand Reporter in and for the State of Iowa, and a Notary Public in and for Polk County, Iowa, hereby certify that on Saturday, February 12, 1944, at 10 a. m. at the office of Ralph Green, at 317 Masonic Temple Building, Des Moines, Polk County, Iowa, I took in shorthand the answers to the interrogatories and cross-interrogatories hereto attached, and I further certify that I have transcribed said answers into long-hand as above set out, and hereby certify that the foregoing transcript is a full, true and complete transcript of said interrogatories and answers as the same were taken by me in shorthand, and that the said transcript above set out contains all the proceedings had at said time and place. Witness my hand this 19th day of February, 1944.

[Seal]

S. S. WRIGHT,

Notary Public in and for Polk County, Iowa.

Before the United States Employees' Compensation
Commission

In the Matter of the Claim for Compensation in
the Death of William Earnest Nutt.

INTERROGATORIES TO BE PROPOUNDED
TO ROBERT L. NINE

Mr. Robert L. Nine, being called as a witness on
behalf of the heirs of William Earnest Nutt, de-

(Deposition of Robert L. Nine.)

ceased, and Clark Nutt, and after being first duly sworn before the officer hereinafter named and described as authorized by law to administer oath, makes the following answers to the interrogatories and cross-interrogatories hereinafter set out.

Int. 1. What is your name, age and present address and residence?

A. Robert L. Nine, 32 years, Box 1130, Fairbanks, Alaska, residing at Big Delta, Alaska.

Int. 2. Who is your president employer and who employed you in June, 1942?

A. Lytle & Green Construction Co. now and in June, 1942.

Int. 3. Were you personally acquainted with William Earnest Nutt who died on or about June 26, 1942? A. Yes.

Int. 4. How long had you known William Earnest Nutt, and were you in any way related to him or his family?

A. About 15 years. I was not related to him or his family.

Int. 5. State, if you know, who employed William Earnest Nutt in June, 1942 and who his employers were on June 25th and 26th, 1942.

A. Lytle & Green Construction Co.—to both parts of question.

Int. 6. Were you working with William Earnest Nutt on the afternoon of June 26, 1942 or on the date he was killed. A. Yes.

Int. 7. If so, was he employed with you on the

(Deposition of Robert L. Nine.)

same job and by the same employer, and if so, who was that employer? A. Yes. Same employer.

Int. 8. What job were you working on, on the afternoon of the day he was killed, and where was this work being carried on and who was all working there with William Earnest Nutt?

A. We were loading electrical equipment on a barge on the Tanana River at Big Delta. Ray Johnson, and Jack Johnson, and Foreman Bill Green. There were three others but I do not remember their names.

Int. 9. State, if you know, who the foreman over William Earnest Nutt and yourself was on the afternoon before William Earnest Nutt was killed.

A. William B. Green.

Int. 10. What work was your employer doing in June, 1942, that you and William Earnest Nutt were working on?

A. Building airport at Big Delta, Alaska; we were working on paving, but on this day, loading electrical equipment on barge.

Int. 11. Did the company maintain a camp for its employees including William Earnest Nutt, and if so, where was that camp in reference to the place where you were working on the afternoon of the day William Earnest Nutt was killed?

A. Yes. It was about eleven (11) miles from where we were working on the day Wm. E. Nutt was killed.

Int. 12. Did the company maintain this camp

(Deposition of Robert L. Nine.)

for its employees, including William Earnest Nutt?
State if you know. A. Yes.

Int. 13. Did the employees sleep there and did they eat there? A. Yes.

Int. 14. Did the company furnish transportation from the camp to the place where its work was being done by you and William Earnest Nutt and the other employees, and if so, what type of transportation and what method of transportation was furnished by company? A. Yes, by truck.

Int. 15. On the day William Earnest Nutt was killed, did you go to the place of work where he was working with him, and if so, about what time of day did you go and what method of transportation did you use?

A. Yes, I went with him. We left the camp at 1:00 P. M. by truck.

Int. 16. Did one of your employer's trucks transport you from the camp to the place where that work was done that William Earnest Nutt and you and the others were doing on the afternoon of the day he was killed? A. Yes.

Int. 17. What kind of a day was it in reference to weather and what kind of a road was there between the camp and the place where you and William Earnest Nutt and the others were working?

A. Rainy day nad the road was rough.

Int. 18. What were you and William Earnest Nutt and the others with you working at for your employer on the afternoon of the day William Earnest Nutt was killed?

(Deposition of Robert L. Nine.)

A. We were loading electrical equipment on a barge.

Int. 19. How long did you and William Earnest Nutt work that afternoon or that day?

A. That afternoon we worked about five (5) hours.

Int. 20. What did you and William Earnest Nutt and the others do after your work was completed, and where did you go?

A. It was raining and we got wet so we went to Rika Wallen's roadhouse to dry out.

Int. 21. If you went to Rika's roadhouse, where was that in referenec to the place where you and William Earnest Nutt were working, and did William Earnest Nutt also go to the same place.

A. Rika's roadhouse was about 500 feet from where we were working. Mr. Nutt also went there.

Int. 22. About what time of day did you go to that place? A. About 6:00 P. M.

Int. 23. State, if you know, whether or not the foreman over William Earnest Nutt and yourself, Mr. W. B. Green, was an employee of the same employer employing you and William Earnest Nutt on that afternoon, and also state, if you know, what the name of that employer was.

A. Yes, employer of all was Lytle & Green Const. Co.

Int. 24. State, if you know, whether William Earnest Nutt was instructed by W. B. Green as to how he was to return to the camp, and state whether there was any conversation in your pres-

(Deposition of Robert L. Nine.)

ence in reference to returning to the camp between W. B. Green and William Earnest Nutt or any others, and state what that conversation was.

A. Yes. There were two trucks and Mr. Green told the ones that wanted to go on the first truck to do so, or take the second truck later. I did not hear any direct conversation between Mr. Green & Mr. Nutt. Mr. Green addressed the group of employees as a whole and left it up to us as to which truck to take back to camp.

Int. 25. Did you remain at the roadhouse, or did you return with the first truck, and if you did return with the first truck, about what time did you return to the camp?

A. I returned with first truck. Returned to camp about 7:00 P. M.

Int. 26. State if you know, whether the roadhouse sold hard liquor, and state what, if anything, you know about what beverages were available to people in the roadhouse.

A. The roadhouse sold no hard liquor, but beer was available.

Int. 27. State, if you know, whether William Earnest Nutt was drinking on the evening of the day he was killed, and if so, state, if you know, what he was drinking.

A. To my knowledge Mr. Nutt was not drinking, at least while I was there.

Int. 28. State, if you know, whether William Earnest Nutt was riding in a truck belonging to

(Deposition of Robert L. Nine.)

your employer and his employer at the time he was killed.

A. William Earnest Nutt was riding in a truck belonging to my employer and his at the time he was killed.

Int. 29. State, if you know, who was riding in the same truck at the time William Earnest Nutt was killed.

A. Jack Johnson, Ray Johnson, Otto Berg and another boy by the name of Walter something, do not recall his last name.

Int. 30. State, if you know, where William Earnest Nutt was killed and state, if you know, where in reference to the camp the spot was that William Earnest Nutt was killed.

A. Yes, I know Mr. Nutt was killed about five miles between Big Delta and the camp site.

Int. 31. Did you see the spot where William Earnest Nutt was killed shortly after he was killed, and if so, how soon after and when?

A. I saw the spot about five hours after Mr. Nutt was killed.

Int. 32. Describe, if you can, the truck William Earnest Nutt was riding in at the time he was killed.

A. It was 1937 V8 with a yard and a half dump box on it.

Int. 33. Tell who the owner of the truck was that William Earnest Nutt was riding in at the time he was killed, and tell who the employer was

(Deposition of Robert L. Nine.)

of the other persons riding in the truck with William Earnest Nutt.

A. Lytle & Green Const. Co. was the owner of the truck and also the employer of the other persons riding in the truck with Wm. E. Nutt.

Int. 34. State, if you know, whether the spot where William Earnest Nutt was killed was on a straight-a-way or on a curve or near a curve, and which direction from the curve that spot was in reference to the curve, and approximately how far said spot was from the roadhouse.

A. It was just coming out of a curve approximately five miles from the roadhouse and 500 feet from the curve to where he was killed, approximately.

Int. 35. State, if you can, whether the road at the point where the accident occurred was rough or smooth or rutty, or what the condition of the road was, and whether the road was wet or dry at the time.

A. Road was wet and rutty at the time of the accident.

Int. 36. Are you acquainted with the family of William Earnest Nutt, and if so, how long have you been acquainted with the family of William Earnest Nutt?

A. Yes, about 15 years.

Int. 37. Are you acquainted with Phyliss Elaine Nutt, Kenneth James Nutt and Raymond Albert Nutt, and state, if you know, whether they are the minor children of William Earnest Nutt?

(Deposition of Robert L. Nine.)

A. Yes, they are the minor children of Wm. Earnest Nutt and I am acquainted with them.

Int. 38. State, if you know, whether the approximate ages of the children are as follows: Phyliss Elaine Nutt, 13; Kenneth James Nutt, 15; and Raymond Albert Nutt, 17. A. Yes.

Int. 39. Are you personally acquainted with Clark Nutt. A. Yes.

Int. 40. What is his name and address and his relationship to William Earnest Nutt?

A. His name is Clark Nutt, Indianola, Iowa, and he is a brother of William Earnest Nutt.

Int. 41. Have you examined the court records in Warren County, Iowa, in reference to the appointment of Clark Nutt as guardian for Phyliss Elaine Nutt, Kenneth James Nutt and Raymond Albert Nutt, and if so, state whether or not those court records disclosed that he has been appointed guardian for those minor children of William Earnest Nutt?

A. Yes, I have examined the court records in Warren County, Iowa, and Clark Nutt has been appointed guardian of the above named minor children of Wm. E. Nutt.

Int. 42. Are you in any way related to Clark Nutt or his wife, or members of his family?

A. No.

Int. 43. How long have you known Clark Nutt?

A. About 15 years, more or less.

Int. 44. After the death of William Earnest Nutt, did you do anything in reference to arrang-

(Deposition of Robert L. Nine.)

ing for the transportation of his body back to Indianola, Iowa, and if so, with whom did you communicate?

A. Yes, I communicated with Clark Nutt and arranged for the transportation of the body to Indianola, Iowa.

Int. 45. State, if you know, whether Clark Nutt paid any or all of the transportation and embalming expenses and funeral expenses of William Earnest Nutt, and state how you know what you do know.

A. Clark Nutt paid all transportation, embalming and funeral expenses of William Earnest Nutt and I know that because Clark Nutt wired money covering all these expenses to local Tye funeral Home at my request.

Int. 46. State, if you can, the approximate amount paid by Clark Nutt for transportation of the body and embalming and funeral expenses of William Earnest Nutt.

A. I believe it was approximately \$750.00.

Int. 47. State, if you know, whether there was a coroner's hearing over the death of William Earnest Nutt, and if so, state whether any of your employers' employees were present at that hearing.

A. Yes, there was a coroner's hearing, and there were several of my employer's employees present at that hearing.

Int. 48. State when and where that hearing occurred and what the nature of the hearing was.

A. The hearing occurred at Fairbanks, Alaska,

(Deposition of Robert L. Nine.)

before U. S. Commissioner Wm. N. Crowden, about July 1st, 1942.

Int. 49. State whether or not the fact of William Earnest Nutt's death and the circumstances thereof were common knowledge among the employees of your employer and William Earnest Nutt's employer shortly after his death.

A. Yes, the death and circumstances were common knowledge among employees.

Int. 50. Name some of the employees, if you can, of your employer and William Earnest Nutt's employer whom you heard discuss this matter and about the date that you heard that discussion.

A. Al Lyons and Ralph Green, about June 27th, 1942.

Int. 51. Did you discuss the death of William Earnest Nutt with any of the employees or officers or foreman of your employer and William Earnest Nutt's employer shortly after the death of William Earnest Nutt, and if so, that with whom you discussed it and when you discussed it.

A. Yes, I discussed the death the next morning with Ralph Green and Al Lyons.

Int. 52. If you did discuss it with any of the employees, state whether any of them told you that it had been reported to your employer and William Earnest Nutt's employer, and if so, when and where this conversation occurred.

A. Al Lyons, general superintendent, told me that the death had been reported. Conversation occurred in the office at camp, June 27th, 1942.

(Deposition of Robert L. Nine.)

Int. 53. Are you in any manner interested financially, or otherwise in a claim in connection with the death of William Earnest Nutt, and specifically in connection with the claim filed in this court over the death of William Earnest Nutt? A. No.

Int. 54. State, if you know, whether there was any other method of transportation back from the place of work to the camp available to the employees of your employer and William Earnest Nutt's employer on the date that William Earnest Nutt's death occurred, and if so, state what that transportation was.

A. No other transportation to the camp that I know of.

Int. 55. State, if you know, what William Earnest Nutt was making at the time, or about the time, he was killed. In your answer state how he was paid and whether his pay that you are testifying about was solely pay from his employer and what the name of that employer was. State how you know what his pay was and what the rate of pay was.

A. Wm. E. Nutt was making about \$100.00 per week, paid by check by Lytle & Green Construction Co. Rate of pay was \$1.00 per hour.

Int. 56. State, if you know, who the insurance carrier was for liability, in connection with this matter, for your employer.

A. United States Fidelity and Guaranty Company, was insurance carrier for employer.

Int. 57. State anything further which you know in reference to the circumstances of William Earn-

(Deposition of Robert L. Nine.)

est Nutt's employment his wages, the work which he was doing on the date he was killed, the employment conditions, the place where the camp was located, the road, and any other matters which occur to you that are pertinent to the claim before the commissioner.

A. The truck on which Mr. Nutt was riding at the time of the accident was a dump truck with the sides of the box about 12 inches high. It is my opinion that as the truck rounded the curve, it hit a chuck hole and Mr. Nutt was knocked to the ground.

Cross-Interrogatories

Submitted by United States Fidelity and Guaranty Co. and C. E. Lytle Company and Green Construction Co.

Int. 1. State in detail what the duties of the deceased, William Earnest Nutt were as an employee of the C. F. Lytle Company and Green Construction Company.

A. Employed as a laborer for the Company

Int. 2. What were his working hours and where was he assigned to work on the day on which he met his death?

A. His working hours were from ten to fifteen hours per day. On the day of his death he was assigned to work at Big Delta, on the Tannana River on loading a barge.

Int. 3. When had he completed his work on the day of his death?

A. Around six o'clock in the evening.

(Deposition of Robert L. Nine.)

Int. 4. At what time did the crew with which he was working on the day of his death ordinarily complete their work and return to their quarters?

A. They worked until their job was completed.

Int. 5. State, if you know, on what time the crew completed their work at the place they were assigned on the day of the death of William Earnest Nutt?

A. Approximately six o'clock.

Int. 6. When and how did the crew leave their place of work on this day?

A. Part of the crew left at once as it was raining. The balance of crew went to Reka's Road House to dry their clothes. Both crews left by truck.

Int. 7. Did the deceased leave with them on this day? A. Yes, in the second truck.

Int. 8. If the answer to the above is in the negative, what did the deceased do after the rest of the crew left the place where they were working?

A.

Int. 9. Did the deceased return from the place where he was working on the day of his death on a truck provided for this purpose? A. Yes.

Int. 10. If the answer to the above is "no" please state when the deceased did return or attempt to return from the vicinity where he was working? A.

Int. 11. If he returned via truck, by whom and for what purpose was the truck on which he was riding being operated at the time of his death?

(Deposition of Robert L. Nine.)

A. The truck was operated by Otto Berg. A company truck and Berg, as mechanic for the company, was trying it out, so the balance of crew rode home with him.

Int. 12. Was it being operated for the purpose of the employer or for the purpose of the persons driving or in charge of the truck?

A. For the purpose of the employer.

Int. 13. State, if you know, whether the other men in the truck with the deceased at the time of his death, were working or had been working or were on the business of the C. F. Lytle Company and Green Construction Company.

A. Yes, with the exception of one Jim Brown, who lived on the road two miles from Big Delta and nine miles from the airport. This man caught a ride home as the road lead past his door.

Int. 14. State, if you know, what the deceased had been doing immediately prior to getting on the truck from which he met his death?

A. I do not know.

Int. 15. State, if you know, whether or not the deceased was intoxicated at the time of his death?

A. In my opinion, no.

Int. 16. State, if you know, if C. F. Lytle and Green Construction Company provided transportation for their workmen at their place of work at times other than the regular shift? A. Yes.

(Deposition of Robert L. Nine.)

State of Iowa

Warren County—ss.

Robert Nine, being first duly sworn on oath, deposes and says that he has subscribed the answers to the foregoing interrogatories and that being first duly sworn on oath deposes and says that the answers made and subscribed thereto are true.

ROBERT L. NINE

Subscribed and sworn to before me this 25th day of Oct., 1944.

LILLIAN WALKER

Clerk, District Court in and for Warren County,
Iowa.

United States Employees' Compensation Commission, Fourteenth Compensation District

In the Matter of the Claim for Compensation Under Public Law 208, 77th Congress, Act of August 6, 1941, as Amended.

Case No. DB-14-655-11

CLARK NUTT, as legally appointed guardian of PHYLLIS ELAINE NUTT, KENNETH JAMES NUTT, and RAYMOND ALBERT NUTT, children of WILLIAM EARNEST NUTT, deceased employee,

Claimant,

vs.

C. F. LYTLE CO. and GREEN CONSTRUCTION COMPANY,

Employer,

U. S. FIDELITY & GUARANTY COMPANY,
Insurance Carrier.

COMPENSATION ORDER AWARD OF COMPENSATION

Such investigation in respect to the above-entitled claim having been made as is considered necessary and no hearing having been applied for by any interested party or considered necessary by the Deputy Commissioner, the Deputy Commissioner makes the following

FINDINGS OF FACT

That on the 26th day of June, 1942, the claimant above named was in the employ of the employer above named at Big Delta, Territory of Alaska, in the Fourteenth Compensation District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, as extended by the Act of August 16, 1941, as amended (42 U.S.C. sec. 1651), to employees of contractors with the United States, and others, employed outside the United States; that the liability of the employer for compensation under said Act was insured by U. S. Fidelity & Guaranty Company;

That on June 26, 1942 and previous thereto because of the location of the work the said employer provided barracks for its employees to live in and truck transportation to and from job locations that were not within walking distance; that on the said day the deceased herein was assigned to assist in the loading of electrical equipment on a barge on the Tanama River at the Big Delta River Bank, about 15 miles from the barracks; that the employer transported the deceased and several fellow employees to the job site; that the work was completed late in the afternoon and deceased and his fellow employees went to Rika's roadhouse about 500 feet from the job site; that the foreman told the employees that they could return on a truck which was leaving then or on one that would leave later; that the employer's trucks were the only means of transportation between Rika's roadhouse and the employer's bar-

racks; that deceased and other employees elected to return by the later truck; that the second truck left three to four hours after the first one; that deceased became intoxicated early in the evening; that at about 10 P.M. when the truck left he was able to get into the truck by himself; that this truck was a 1937 or 1938 V-8 1½ yard dump truck; that deceased rode in the body of the truck with Ray Johnston and Harold Johnston; that deceased was in a happy stage of intoxication; that when about four miles from the barracks and while deceased was standing in the body of the truck one of the wheels struck either a hole in the road or an obstruction, catapulting the deceased over the side of the truck; that he landed first on his feet and then slid forward about 20 feet; that neither of the rear wheels struck the deceased; that the deceased died from a broken neck almost instantly; that the death of the deceased was not occasioned solely by the intoxication of the deceased; that the death of the deceased arose out of and in the course of his employment;

That written notice of death was not given within thirty days, but that the employer had knowledge of the death and has not been prejudiced by the lack of such written notice;

That the employer did not furnish deceased with medical treatment as death was practically instantaneous;

That the average weekly wage of the deceased herein at the time of the injury exceeded \$37.50;

That the deceased employee was a widower; that

Phyllis Elaine Nutt, who was born February 13, 1930, Kenneth James Nutt, who was born February 26, 1928, and Raymond Albert Nutt, who was born December 11, 1925, are the surviving children of the deceased employee and as such are each entitled to receive death benefits at the rate of \$5.63 per week (15 per cent of \$37.50), subject to the provisions of the law; that such compensation is payable to Clark Nutt, who was legally appointed guardian of said children on June 8, 1943;

That Raymond Albert Nutt attained the age of 18 on December 11, 1943; that all death benefits to which Raymond Albert Nutt is entitled have accrued; that such death benefits amount to \$428.68 for the period June 26, 1942 to December 10, 1943, inclusive, a period of 76 1/7 weeks at the rate of \$5.63 per week;

That accrued death benefits to which Kenneth James Nutt and Phyllis Elaine Nutt are entitled amount to \$1767.82, for the period June 26, 1942, to June 28, 1945, inclusive, a period of 157 weeks at the rate of \$5.63 per week each;

That J. O. Watson, Jr., Attorney, has rendered legal services to claimant, the fair value of which is \$400.00;

That burial expenses amounted to \$691.97, which were paid by Clark Nutt; that the employer and the insurance carrier are liable to Clark Nutt in the amount of \$200.00;

Upon the foregoing findings of fact, the Deputy Commissioner makes the following

AWARD

That the employer, C. F. Lytle Co. & Green Construction Co., and the insurance carrier, U. S. Fidelity & Guaranty Company, shall pay to Clark Nutt, as guardian of Raymond Albert Nutt, death benefits in behalf of said Raymond Albert Nutt at the rate of \$5.63 per week from June 26, 1942 to December 10, 1943, inclusive, a period of 76 1/7 weeks amounting to \$428.68;

That the employer, C. F. Lytle Co. & Green Construction Co., and the insurance carrier, U. S. Fidelity & Guaranty Company, shall pay to Clark Nutt, as guardian of Kenneth James Nutt and Phyllis Elaine Nutt, death benefits in behalf of said children at the rate of \$5.63 per week each, or a total of \$11.26 per week, from June 26, 1942 to June 28, 1945, inclusive, a period of 157 weeks, amounting to \$1767.82 and thereafter shall continue payments of death benefits at the rate of \$11.26 per week, payable in bi-weekly installments subject to the limitations of the law or until otherwise ordered.

That the employer, C. F. Lytle Co. & Green Construction Co., and the insurance carrier, U. S. Fidelity & Guaranty Company, shall pay to Clark Nutt in his individual capacity in reimbursement of their maximum liability for funeral expense, the amount of \$200.00.

A fee for legal services rendered the claimant in

his capacity as guardian is approved in favor of Attorney J. O. Watson in the sum of \$400.00, such amount to constitute a lien and be paid out of the award.

Given under my hand at Seattle, Washington this 3d day of July, 1945.

C. M. WHIPPLE

Deputy Commissioner,
Fourteenth Compensation
District

PROOF OF SERVICE

I hereby certify that a copy of the foregoing compensation order was sent by registered mail to the claimant, the employer, the insurance carrier, and the attorney for the claimant, at the last known address of each as follows: Clark Nutt, Indianola, Iowa; C. F. Lytle Co. and Green Construction Company, Hoge Bldg., Seattle 4, Wash.; U. S. Fidelity & Guaranty Co., Central Building, Seattle 4, Wash.; J. O. Watson, Jr., 106 E. Salem Ave., Indianola, Iowa.

C. M. WHIPPLE

Deputy Commissioner

Mailed: July 3, 1945.

[Title of District Court and Cause.]

MOTION FOR PERMISSION TO INTERVENE

Comes Now Clark Nutt, through his attorney, Leo M. Koenigsberg, and respectfully moves the

court for permission to intervene in the above entitled cause upon the grounds and for the reason that he is the legally appointed guardian of Phyllis Elaine Nutt, Kenneth James Nutt, and Raymond Albert Nutt, children of William Earnest Nutt, deceased employee for whose benefit compensation order award of compensation of the United States Employees Compensation Commission, 14th Compensation District, was issued on or about July 3, 1945, and which compensation order libellants seek to set aside.

This motion is based upon the files and records herein and the affidavit of L. M. Koenigsberg hereto attached.

LEO M. KOENIGSBERG

Attorney of Intervenor

[Endorsed]: Filed Nov. 5, 1945.

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION FOR
PERMISSION TO INTERVENE

State of Washington,
County of King—ss.

L. M. Koenigsberg, being first duly sworn, upon oath deposes and says: that he has just been employed by Clark Nutt for the purposes of intervening in the above entitled cause; that Clark Nutt has employed your affiant so as to give assistance to the United States Attorney and the Assistant United

States Attorney in the preparation and defense of the above entitled cause; that your affiant received a telegram employing him on Friday, November 2, 1945, and has not had an opportunity to peruse the files and records and prepare in connection with the motion to dismiss now pending in the above entitled court; that your affiant desires, therefore, that said motion be continued to a date in the latter part of November.

L. M. KOENIGSBERG

Subscribed and sworn to before me this 5th day of November, 1945.

P. O. D. VEDOVA

Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed Nov. 5, 1945.

[Title of District Court and Cause.]

ORDER GRANTING PERMISSION TO
INTERVENE

This Matter came on regularly before the undersigned, one of the Judges of the above entitled court, and it appearing that Clark Nutt, guardian of the children of the deceased employee for whose benefit compensation order award of compensation was issued by the Deputy Commissioner of the United States Employees Compensation Commission, 14th Compensation District, has moved the court for permission to intervene, and the court being fully advised in the premises,

Now, therefore, it is

Ordered, Adjudged and Decreed that Clark Nutt be and is hereby granted permission to intervene in the above entitled cause.

Done in Open Court this 5th day of November, 1945.

JOHN C. BOWEN

Judge

Presented by:

LEO M. KOENIGSBERG

Attorney for Intervenor

By H. S. SANFORD

[Endorsed]: Filed Nov. 5, 1945.

In the District Court of the United States for the
Western District of Washington, Northern
Division

In Admiralty—No. 14797

C. F. LYTLE CO., an Iowa corporation, GREEN
CONSTRUCTION CO., an Iowa corporation,
and UNITED STATES FIDELITY & GUAR-
ANTY COMPANY, a Maryland corporation,
Libelants,

v.

C. M. WHIPPLE,

Respondent,

CLARK NUTT, Guardian of PHYLLIS ELAINE
NUTT, KENNETH JAMES NUTT and RAY-
MOND ALBERT NUTT, children of WIL-
LIAM EARNEST NUTT, Deceased,
Claimant.

ORDER GRANTING MOTION TO DISMISS

This Matter came on regularly for hearing before the undersigned, one of the Judges of the above entitled court, on Monday, November 19, 1945, at 10:30 o'clock a.m., and argument was concluded on the afternoon of the same day at or about 3:30 o'clock p.m., libellants appearing by Hayden, Merritt, Summers & Stafford, proctors for said libelants, respondent appearing by his attorney, Herbert O'Hare, Assistant United States Attorney, and claimant Clark Nutt, Guardian of Phyllis Elaine Nutt, Kenneth James Nutt and Raymond Albert Nutt, children of William Earnest Nutt, deceased,

appearing by his attorney, Leo M. Koenigsberg, and it having been stipulated by and between the counsel for all parties that the transcript of all the testimony which was submitted to the Deputy Commissioner be considered part of the files and records in this cause, and briefs having been submitted by the libellants and the respondent, and the court having listened to argument of counsel for the libellants and for the claimant and being fully advised in the premises and motion having been made heretofore by respondent to dismiss petition for injunctive relief,

Now, therefore, it is

Ordered, Adjudged and Decreed that the motion to dismiss the libel to set aside the Deputy Commissioner's award as not being in accordance with law be and is hereby granted, and that the Deputy Commissioner's award of July 3, 1945, be and is hereby affirmed, and the libel herein is dismissed.

It Is Further Ordered, Adjudged and Decreed that legal services rendered to claimant Clark Nutt, Guardian of Phyllis Elaine Nutt, Kenneth James Nutt and Raymond Albert Nutt, children of William Earnest Nutt, deceased, by Leo M. Koenigsberg are of the reasonable value of \$200.00 and such amount to be paid out of the award herein affirmed and constitute a lien on the compensation now due or hereafter to become due to said claimant, and said libellants shall be permitted to satisfy said lien by deducting \$20.00 from each bi-weekly payment now due or hereafter to become due, making

said deductions until such time as the full sum of \$200.00 paid to Leo M. Koenigsberg has been fully satisfied.

The libellants except to all of the foregoing and the exception is hereby allowed.

Done in Open Court this 21 day of November, 1945.

JOHN C. BOWEN

Judge

Presented by:

L. M. KOENIGSBERG

Attorney for Claimant

O. K. as for form:

MERRITT, SUMMERS, BUCEY
& STAFFORD

By MATTHEW STAFFORD

Attorneys for Libelants.

Approved:

HERBERT O'HARE

Asst. U. S. Attorney

[Endorsed]: Filed Nov. 21, 1945.

In the District Court of the United States for the
Western District of Washington, Northern
Division

No. 14797

C. F. LYTLE CO., et al,

Libellants,

vs.

C. M. WHIPPLE,

Respondent,

CLARK NUTT,

Intervenor.

COURT'S ORAL DECISION

(As announced from the Bench, November 19,
1945, by Judge Bowen.)

The Court: I believe that the Arkansas Court decision cited by Mr. Koenigsberg is not controlling upon the facts here for the reasons pointed out by Mr. Stafford. I am, however, mindful of the status and the function of this Court in this case, and I understand the statute and the authoritative decisions thereunder to mean that this Court cannot today try this case de novo; that the only function this Court has with respect to it is to review the action of the Deputy Commissioner, the Tribunal which did have authority to and did try the facts, to see if there is substantial evidence to support the findings and action of the Deputy Commissioner. If there is such substantial evidence, the Deputy Commissioner's action must be confirmed.

I do not hesitate to say that I feel that the Deputy Commissioner made a mistake in arriving at the decision and conclusions announced by him, but I am unable to say that as a matter of law there is no substantial evidence to support the action of the Deputy Commissioner. On the contrary, I am inclined to think there is some substantial evidence to support the Deputy Commissioner, notably the testimony of witness Berg, the truck driver, that he felt a jarring of the truck at the time of the accident, and for that reason it seems to me under the statute this Court is without authority to change the result arrived at by the Deputy Commissioner.

I repeat, however, that I think the Commissioner made a mistake. I think in view of the testimony of Ray Johnston as to what took place in respect to those things connected with the accident, that the more direct and positive proof in this case is more convincing that the decedent, while in a partially intoxicated condition and in a spirit of playfulness or bravado or acting under alcoholic stimulant, stepped out of that truck, himself, and that he was not thrown out of the truck by any jarring of the truck caused by rough roads. That is what I think about it, but I assume from the statute that my thought in the matter is of no concern in view of the fact that this Court cannot hold as a matter of law that there is no substantial evidence to support the Deputy Commissioner's action.

In view of the foregoing, the action of the Deputy Commissioner will have to be confirmed, and all requests of the employer and the insurance carrier

contrary to such action are denied. It is the opinion of the Court that the motion to dismiss the libel of the employer and insurance carrier must be granted.

(Discussion as to the Attorney's fee.)

Concluded.

[Endorsed]: Filed Nov. 30, 1945.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To C. M. Whipple, respondent in the above-entitled cause; and

To J. Charles Dennis, United States Attorney, and Herbert O'Hare, Assistant United States Attorney, Proctors for said respondent;

To Clark Nutt, guardian of Phyllis Elaine Nutt, Kenneth James Nutt, and Raymond Albert Nutt, minor children of William Earnest Nutt, deceased, claimant in said cause; and

To Leo M. Koenigsberg, Proctor for said claimant;

To The Honorable Judges of the above-entitled court; and to The Clerk of said court:

You, and each of you, will please take notice that C. F. Lytle Co., an Iowa corporation, Green Construction Co., an Iowa corporation, and United States Fidelity and Guaranty Company, a Maryland corporation, Libelants in the above entitled

cause, and American Surety Company of New York, a New York corporation, the stipulator or surety upon the stipulation for costs filed in said cause by said libelants,

Hereby Appeal from that certain order or final decree in said cause, against said libelants, and in favor of said respondent and said claimant, which was signed by the Honorable John C. Bowen, Judge of the above-entitled court, filed with the clerk of said court and entered in said cause on November 21, 1945; hereby appealing from the whole of said order or final decree, and from each and every part thereof, unto the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 4th day of December, 1945.

MERRITT, SUMMERS, BUCEY
& STAFFORD.

MATTHEW STAFFORD,
G. H. BUCEY,

Proctors for said Libelants, C. F. Lytle Co., Green Construction Co., and United States Fidelity and Guaranty Company, and said Stipulator American Surety Company of New York.

[Endorsed]: Filed Dec. 4, 1945.

[Title of District Court and Cause.]

ASSIGNMENTS OF ERROR

C. F. Lytle, an Iowa corporation, Green Construction Co., an Iowa corporation, and United States Fidelity and Guaranty Company, a Maryland corporation, libelants in the above-entitled cause, and American Surety Company of New York, a New York corporation, the stipulator or surety upon the stipulation for costs filed in said cause by said libelants, hereby respectfully assign errors in the proceedings in said cause and in the findings, conclusions and rulings of the above-entitled court, and its order or final decree signed, entered and filed in said cause on November 21, 1945, as follows:

(1) The court erred in finding, concluding and holding that the record of the proceedings before the Deputy United States Compensation Commissioner contained substantial evidence that the death of William Earnest Nutt arose out of and in the course of his employment; and in failing to find, conclude and hold the contrary.

(2) The court erred in finding, concluding and holding that said record did not affirmatively establish, so as not to permit any conflicting inference, that the death of William Earnest Nutt was occasioned solely by his intoxication; and in failing to find, conclude and hold the contrary.

(3) The court erred in granting the motion of respondent C. M. Whipple to dismiss the libel

of libelants herein; and in failing to deny said motion.

(4) The court erred in entering the order or final decree on November 21, 1945, granting said motion to dismiss, and dismissing said libel.

Dated this 4th day of December, 1945.

MERRITT, SUMMERS, BUCEY
& STAFFORD.

MATTHEW STAFFORD,
G. H. BUCEY,

Proctors for said Libelants, C. F. Lytle Co., Green Construction Co., and United States Fidelity and Guaranty Company, and said Stipulator American Surety Company of New York.

[Endorsed]: Filed Dec. 4, 1945.

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men by These Presents: That we, C. F. Lytle Co., an Iowa corporation, Green Construction Co., an Iowa corporation, and United States Fidelity and Guaranty Company, a Maryland corporation, being the Libelants in the above entitled cause, and American Surety Company of New York, a New York corporation, the stipulator or surety upon the stipulation for costs heretofore filed in said cause by said libelants, as Principals, and Maryland Casualty Company, a corporation

duly organized and existing under and by virtue of the laws of the state of Maryland, and authorized to transact the business of surety in the state of Washington, as Surety, are held and firmly bound unto C. M. Whipple, the respondent in said cause, being the Deputy Commissioner of the United States Employees Compensation Commission, for the Fourteenth Compensation District, and/or his successor in such office, and unto Clark Nutt, as guardian of Phyllis Elaine Nutt, Kenneth James Nutt, and Raymond Albert Nutt, minor children of William Earnest Nutt, deceased, the claimant in said cause, and/or his successor as said guardian, in the sum of Two Hundred Fifty Dollars (\$250.00) in lawful money of the United States, for the full and complete payment of which, well and truly to be made, we, and each of us, hereby bind ourselves and our respective successors and assigns, jointly and severally, firmly by these presents;

The condition of this obligation being as follows, to-wit:

Whereas an order or final decree was entered in the above-entitled court and cause against said libelants and in favor of said respondent and said claimant on November 21, 1945; and said above named Principals are about to take an appeal from said order or final decree, and each and every part thereof, unto the United States Circuit Court of Appeals for the Ninth Circuit;

Now, Therefore, if said above bounden Principals shall pay all costs that may be awarded

against them, or any of them if said appeal be dismissed or the order or final decree appealed from affirmed; then this obligation shall be void; otherwise, it shall remain in full force and effect.

Signed and sealed this 3d day of December, 1945.

C. F. LYTLE CO.,
GREEN CONSTRUCTION CO.,
UNITED STATES FIDELITY AND GUAR-
ANTY COMPANY, and AMERICAN
SURETY COMPANY OF NEW YORK,
By MERRITT, SUMMERS, BUCEY & STAF-
FORD,
MATTHEW STAFFORD,
G. H. BUCEY,

As Their Proctors (Principals).

MARYLAND CASUALTY COMPANY,

[Seal]

By CHARLES NEALEY,
Atty. in Fact (Surety).

[Endorsed]: Dec. 4, 1945.

[Title of District Court and Cause.]

PETITION FOR APPEAL

To The Honorable Judges of the Above-Entitled
Court:

C. F. Lytle Co., an Iowa corporation, Green Construction Co., an Iowa corporation, and United States Fidelity and Guaranty Company, a Maryland corporation, libelants in the above-entitled cause, and American Surety Company of New

York, a New York corporation, the stipulator or surety upon the stipulation for costs filed in said cause by said libelants, and each of them, being aggrieved by that certain order or final decree, signed, filed and entered in the above-entitled cause on the 21st day of November, 1945, hereby claim an appeal from the whole of said order or final decree, and from each and every part thereof, to the United States Circuit Court of Appeals for the Ninth Circuit, and hereby pray that such appeal may be allowed forthwith by order of the above-entitled court, upon their notice of appeal and assignments of error, heretofore filed herein and duly presented herewith, without issuance of citation.

Dated this 4th day of December, 1945.

MERRITT, SUMMERS, BUCEY
& STAFFORD.

MATTHEW STAFFORD,
G. H. BUCEY,

Proctors for said Libelants C. F. Lytle Co., Green Construction Co., and United States Fidelity and Guaranty Company, and said Stipulator American Surety Company of New York.

[Endorsed]: Filed Dec. 4, 1945.

[Title of District Court and Cause.]

ACKNOWLEDGMENT OF SERVICE AND
CONSENT

Service on this day of the Notice of Appeal, Petition for Appeal, and Assignments of Error, in the

above-entitled cause, of C. F. Lytle Co., Green Construction Co., United States Fidelity and Guaranty Company, the libelants in said cause, and American Surety Company of New York, the stipulator or surety upon the stipulation for costs herein of said libelants; all of which have been filed in the above-entitled court and cause; and service of copy of proposed order granting petition for appeal and allowing said appeal; are hereby acknowledged; and consent is hereby given that presentation of said Notice of Appeal, Petition for Appeal, Assignments of Error, and Order, may be made to, and hearing thereon had in the above-entitled court before, Honorable John C. Bowen, judge of said court, on the 4th day of December, 1945, at 1:55 o'clock P. M. thereof, or as soon thereafter as said presentation and hearing may be had; and that if said appeal be allowed, no citation need be issued thereon.

Dated this 4th day of December, 1945.

J. CHARLES DENNIS,
United States Attorney.

HERBERT O'HARE,
Assistant United States Attorney, Proctors for respondent above-named.

L. M. KOENIGSBERG,
Proctor for Claimant Above-Named.

[Endorsed]: Filed Dec. 4, 1945.

[Title of District Court and Cause.]

ORDER GRANTING PETITION FOR APPEAL

The above-entitled cause having come on duly and regularly for hearing on this day before the above-entitled court, the undersigned judge presiding, upon the petition for appeal of C. F. Lytle Co., Green Construction Co., United States Fidelity and Guaranty Company, libelants in said cause, and American Surety Company of New York, the stipulator or surety upon the stipulation for costs filed in said cause by said libelants, which was then presented to this court, together with notice of appeal and assignments of error of said libelants and said stipulator, heretofore filed herein on this day, and there also being presented therewith the cost bond on appeal, filed herein on this day by said libelants and said stipulator, together with acknowledgment of service and consent signed by the proctors for the respondent and claimant in said cause; and the court having duly considered all of said matters, and being fully advised in the premises;

Does hereby order and adjudge that said petition for appeal is granted and said appeal allowed as prayed for in said petition; and that no citation on said appeal be issued.

Done in open court this 4th day of December, 1945.

JOHN C. BOWEN,

United States District Judge.

Presented by:

C. H. BUCEY,

Of Proctors for Said Libelants and Said Stipulator.

[Endorsed]: Filed Dec. 4, 1945.

[Title of District Court and Cause.]

ACKNOWLEDGMENT OF SERVICE

Service on this 4th day of December, 1945, of Notice of Appeal, this day filed herein by the above named libelants, and the stipulator or surety upon their stipulation for costs herein, and service on this day of Order Granting Petition for Appeal of said parties, as signed, filed and entered in the above-entitled District Court on this day, are hereby acknowledged.

J. CHARLES DENNIS,

United States Attorney.

HERBERT O'HARE,

Assistant United States Attorney.

Proctors for Respondent
Above-Named.

LEO M. KOENIGSBERG,

By H. S. SANFORD,

Proctor for Claimant Above-Named.

[Title of District Court and Cause.]

AMENDED STIPULATION AS TO RECORD
OR APOSTLES ON APPEAL

It Is Stipulated by and between the appellants in the above-entitled cause, C. F. Lytle Co., Green Construction Co., and United States Fidelity and Guaranty Company, being the libelants therein, and American Surety Company of New York, being the stipulator or surety upon the stipulation for costs of said libelants; and the appellees therein, C. M. Whipple, being the respondent in said cause, and Clark Nutt, guardian of Phyllis Elaine Nutt, Kenneth James Nutt and Raymond Albert Nutt, minor children of William Earnest Nutt, deceased, being the claimant therein, as follows:

I.

That for the purposes of the appeal by said appellants to the United States Circuit Court of Appeals for the Ninth Circuit, referred to in the Notice of Appeal and Petition for Appeal filed in said cause by said appellants on December 4, 1945, there shall be included in the printed record or apostles on appeal the following:

(1) The libel of C. F. Lytle Co., et al, filed herein on July 19, 1945 (omitting therefrom the copy of compensation order and award of compensation of the Deputy Commissioner).

(2) The libelants' Stipulation for Costs, on which said American Surety Company of New

York is stipulator or surety, filed herein on July 19, 1945.

(3) Libelants' Application for Interlocutory Injunction, filed herein on July 19, 1945.

(4) Minute entry of order of court rendered August 6, 1945, denying libelants' application for interlocutory injunction.

(5) Respondent C. M. Whipple's Motion to Dismiss the Libel, filed herein on October 3, 1945.

(6) Certification dated at Seattle, Washington, on October 31, 1945, and signed by C. M. Whipple, Deputy Commissioner.

(7) The following items, and only the following items, from the record so certified by C. M. Whipple, Deputy United States Compensation Commissioner, which record was filed herein on November 1, 1945:

(a) Item No. 40, consisting of a transcript of proceedings before William M. Growden, United States Commissioner and ex-officio Coroner, Fairbanks Precinct, Fourth Judicial Division, Alaska, in the matter of the inquest upon the body of Willian Earnest Nutt, deceased, at Fairbanks, Territory of Alaska, on July 29, 1942;

(b) Item No. 41, consisting of deposition on written interrogatories of A. A. Lyon;

(c) Item No. 42, consisting of deposition on written interrogatories of W. H. Green;

(d) Item No. 43, consisting of deposition on written interrogatories of Ralph Green;

(e) Item No. 44, consisting of deposition on written interrogatories of Robert L. Nine;

(4) Item No. 45, consisting of compensation order, award of compensation, filed July 31, 1945.

(8) Motion of Clark Nutt for permission to intervene, filed herein on November 5, 1945.

(9) Affidavit in support of said motion, filed herein on November 5, 1945.

(10) Order granting permission to intervene, signed, filed and entered herein on November 5, 1945.

(11) Court's oral decision (as announced from the bench, November 19, 1945, by Judge Bowen), sustaining respondent's motion to dismiss the libel, the written memorandum of which decision was filed herein on November 30, 1945.

(12) Order or final decree granting motion to dismiss libel, signed, filed and entered herein on November 21, 1945.

(13) Notice of appeal of the appellants above named, filed herein on December 4, 1945.

(14) Bond for costs on appeal of said appellants, with Maryland Casualty Company as surety thereon, filed herein on December 4, 1945.

(15) Assignments of error, filed herein on December 4, 1945.

(16) Petition for appeal, filed herein on December 4, 1945.

(17) Acknowledgment of service of notice of appeal, etc., and consent to presentation of order allowing appeal, filed herein on December 4, 1945.

(18) Order granting petition for appeal, signed, filed and entered herein on December 4, 1945.

(19) Acknowledgment of service of order granting petition for appeal, filed herein on December 4, 1945.

(20) Order of court, if entered herein, providing for transmission of original record certified by the Deputy United States Compensation Commissioner, as stipulated in paragraph (6) hereof.

(21) This stipulation.

(22) Praeceptum for record or apostles on appeal.

II.

It is further Stipulated that, although no other portions of the record certified by C. M. Whipple, Deputy United States Compensation Commissioner, filed herein on November 1, 1945, are to be printed in the record of apostles on appeal herein, the court is at liberty to consider any or all other parts of said record so certified by C. M. Whipple, the original of which has been transmitted by the clerk of the above-entitled court to the clerk of the United

States Circuit Court of Appeals for the Ninth Circuit, in lieu of copy thereof.

Dated: January 16, 1946.

MERRITT, SUMMERS, BUCEY
& STAFFORD.

MATTHEW STAFFORD,
G. H. BUCEY, Per M. S.,
Proctors for Said Appellants.

J. CHARLES DENNIS,
United States Attorney.

TOM A. DUNHAM,
Assistant U. S. Attorney.
Proctors for Said Appellee,
C. M. Whipple.

LEO M. KOENIGSBERG,
Proctor for Said Appellee,
Clark Nutt.

United States of America,
Western District of Washington—ss.

CERTIFIED COPY

I, Millard P. Thomas, Clerk of the United States District Court in and for the Western District of Washington, do hereby certify that the annexed and foregoing is a true and full copy of the original Amended Stipulation as to Record or Apostles on Appeal filed on January 17, 1946, in Cause No. 14797, C. F. Lytle Co., an Iowa corporation, Green Construction Co., an Iowa corporation, and United

States Fidelity and Guaranty Company, a Maryland corporation, Libelants, vs. C. M. Whipple, Respondents, Clark Nutt, guardian of Phyllis Elaine Nutt, Kenneth James Nutt and Raymond Albert Nutt, children of William Earnest Nutt, deceased, Claimant, now remain among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Seattle this 18th day of January, A. D. 1946.

(Seal) MILLARD P. THOMAS,
Clerk.
By M. BROOKS,
Deputy Clerk.

[Endorsed]: Filed Jan. 17, 1946.

[Title of District Court and Cause.]

PRAECIPE FOR RECORD OR APOSTLES
ON APPEAL

To the Clerk of the Above-Entitled Court:

Utilizing copies or transcript filed herewith, you hereby are requested to prepare in the above-entitled cause record or apostles on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, supplementing and comparing such copies or transcript to the extent necessary to make, index and certify full, true and complete record or

apostles on appeal, as required by Rule 5 of the Admiralty Rules of said appellate court, and/or by Rule 75 of the Federal Rules of Civil Procedure, containing the items specified in the stipulation as to record or apostles on appeal, filed herein; all other motions, stipulations, orders, and other matters, if any, filed subsequent to December 4, 1945, prior to certification of said record or apostles, relating to or in connection with the appeal herein; and this praecipe.

Dated December 7, 1945.

MERRITT, SUMMERS, BUCEY
& STAFFORD.

MATTHEW STAFFORD,
G. H. BUCEY,

Proctors for Appellants, C. F. Lytle Co., Green
Construction Co., United States Fidelity and
Guaranty Company, and American Surety Com-
pany of New York.

Copy received December 7, 1945.

J. CHARLES DENNIS,
United States Attorney.
Proctor for Appellee, C. M.
Whipple.

L. M. KOENIGSBERG,
Proctor for Appellee, Clark
Nutt, guardian, etc.

[Endorsed]: Filed Dec. 7, 1945.

[Title of District Court and Cause.]

ORDER AUTHORIZING TRANSMISSION
OF ORIGINAL RECORD

Upon motion of appellants, and in accordance with stipulation of appellants and appellees, on file in the above entitled cause, it appearing to the court proper;

It hereby is Ordered that, in connection with the appeal of said appellants to the United States Circuit Court of Appeals for the Ninth Circuit, in the said cause, that certain original record certified by C. M. Whipple, Deputy United States Compensation Commissioner, and filed herein on November 1, 1945, shall be withdrawn by the clerk of this court from the files herein, and transmitted to the clerk of said appellate court, in lieu of copies, and as part of said appellants' record or apostles on appeal in said cause.

Done in open court this 7th day of December, 1945.

Presented by:

G. H. BUCEY,

Of Proctors for Said Appel-
lants.

JOHN C. BOWEN,

United States District Judge.

We consent to entry of the foregoing order.

J. CHARLES DENNIS,
United States Attorney.

Proctor for Said Appellee,
C. M. Whipple.

L. M. KOENIGSBERG,
Proctor for Said Appellee,
Clark Nutt, Guardian, etc.

[Endorsed]: Filed Dec. 7, 1945.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO APOSTLES
ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing type-written transcript of record, consisting of pages numbered from 1 to 48, inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as is required by Praeceptum and Designation of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle and that

the same, together with Record certified by C. M. Whipple, Deputy United States Compensation Commissioner, filed on November 1, 1945, the original of which is sent up as part of this record, constitute the apostles on appeal from the Decree of said United States District Court for the Western District of Washington to the United States Circuit Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellants for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, to wit:

Clerk's fees (Act of February 11, 1925) for
making Record, certificate or return:

15 folios at 15c	\$ 2.25
118 folios at 05c	5.90
Appeal fee (Section 5 of Act).....	5.00
Certificate of Clerk to Apostles on Appeal....	.50
Certificate of Clerk to Record Certified by C. M. Whipple50
<hr/>	
Total	\$14.15

I further certify that the above amount has been paid to me by the proctors for the appellants.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District

Court at Seattle, in said District, this 21st day of December, 1945.

[Seal]

MILLARD P. THOMAS,

Clerk.

By PERCY MADDUX,

Deputy.

[Endorsed]: No. 11217. United States Circuit Court of Appeals for the Ninth Circuit. C. F. Lytle Co., an Iowa corporation, Green Construction Co., an Iowa corporation, United States Fidelity and Guaranty Company, a Maryland corporation, and American Surety Company of New York, a New York corporation, Appellants, vs. C. M. Whipple, Deputy United States Compensation Commissioner for the Fourteenth Compensation District, and Clark Nutt, Guardian of Phyllis Elaine Nutt, Kenneth James Nutt and Raymond Albert Nutt, children of William Earnest Nutt, deceased, Appellees. Apostles on Appeal. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed December 26, 1945.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

In Admiralty—No. 11217

C. F. LYTLE CO., an Iowa corporation, GREEN
CONSTRUCTION CO., an Iowa corporation,
UNITED STATES FIDELITY AND GUAR-
ANTY COMPANY, a Maryland corporation,
and AMERICAN SURETY COMPANY OF
NEW YORK, a New York corporation,
Appellants,

vs.

C. M. WHIPPLE, Deputy United States Compen-
sation Commissioner for the Fourteenth Com-
pensation District, and CLARK NUTT, guard-
ian of Phyllis Elaine Nutt, Kenneth James
Nutt and Raymond Albert Nutt, children of
William Earnest Nutt, Deceased,
Appellees.

APPELLANTS' STATEMENT OF POINTS,
AND DESIGNATION OF PARTS OF REC-
ORD.

To the Honorable Judges of the Above-Entitled
Court:

Appellants herein, C. F. Lytle Co., Green Con-
struction Co., United States Fidelity and Guaranty
Company, and American Surety Company of New
York, hereby refer to and adopt as their Statement
of Points on which they intend to rely upon their

appeal, all of their assignments of error, included in the apostles on appeal (pages 30 and 31); and

Said appellants, as their Designation of Parts of the Record which they deem necessary for consideration on said appeal, hereby designate all of said apostles on appeal (pages 1 to 48), including the original record certified by C. M. Whipple, Deputy United States Compensation Commissioner, which is part of said apostles on appeal, in accordance with the stipulation of December 7, 1945, shown in said apostles (pages 41 to 44), including all portions of the record specified in appellants' praecipe, shown in said apostles (pages 45 and 46).

Respectfully submitted,

MERRITT, SUMMERS, BUCEY
& STAFFORD.

MATTHEW STAFFORD,
G. H. BUCEY,

Proctors for Said Appellants.

Copy received December 21, 1945.

J. CHARLES DENNIS,

United States Attorney.

Proctor for Appellee, C. M.
Whipple.

L. M. KOENIGSBERG,

Proctor for Appellee, Clark
Nutt, Guardian, etc.

[Endorsed]: Filed December 26, 1945. Paul P.
O'Brien, Clerk.

